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IN THE

SUPREME COURT

OF THE

UNITED STATES.

P. L. Crane,

Appellant,

vs.

Hiram W. Johnson, Governor of the State of California, U. S. Webb, Attorney General of the State of California, and Thomas Lee Woolwine, District Attorney of the County of Los Angeles, California,

Appellees.

APPELLANT'S BRIEF.

This is an appeal from an order denying an application for an interlocutory injunction seeking to restrain the attorney general of the state of California and the district attorney of the county of Los Angeles, California, from enforcing the provisions of a law enacted by the legislature of the state of California, and known as the Medical Law of the state of California, and fully set forth in the original bill of complaint herein. Said application was made under the provisions of section 266 of the Judicial Code of the United States and heard before Erskine M. Ross, circuit judge of the United States, and O. A. Trippet and E. E. Cushman, district judges of the United States.

The acts of the legislature of the state of California as complained of by the plaintiff as

being in contravention of his rights under the Fourteenth Amendment of the Constitution of the United States is fully set forth in plaintiff's complaint filed herein, and is known as the Medical Law of the state of California, regulating the examination of applicants for licenses and the practice of those licensed to treat diseases, injuries, deformities or other physical or mental conditions of human beings.

Section 17 of said law, found on page 48 of plaintiff's bill of complaint, makes it a penal offense punishable by a fine of not less than $100 nor more than $600, or by imprisonment for a term of not less than 60 days nor more than 180 days, or by both such fine and imprisonment, for any person to practice or attempt to practice, or to advertise or hold himself out as practicing any system or mode of treating the sick or afflicted in the state of California.

Section 22 of the Act of 1913, found on page 24 of plaintiff's bill of complaint, expressly provides that the said act shall not regulate, prohibit or apply to any kind of treatment by prayer.

Within the limitations of the federal Constitution the state may, in the exercise of its police power, make such reasonable regulations as are conducive to the health, morals, safety, convenience and general welfare of the people, but to constitute a valid police regulation a law must be reasonable, giving equal protection and security to all under like circumstances in the enjoyment of their personal and civil rights.

It is our contention that the legislature of the state of California has, under the guise of a

police regulation, created a monopoly favored by law in the practice of drugless treatment of diseases in relieving that class of drugless practitioners from the equal operation of the law who employ prayer in the treatment of diseases.

We further contend that that portion of the law referring to drugless practitioners is obnoxious to and discriminates against every other school of drugless healing and practice in favor of the practitioner by prayer, and is therefore unconstitutional and void.

We further contend that the legislature of the state of California did not have the power under the guise of a police regulation to discriminate between the treatment of the sick by prayer, the treatment of the sick by faith, mental suggestion and mental adaptation, the treatment of the sick by the laying on of hands, the treatment of the sick by anointing with oil, or kindred treatments, to approve of the one and condemn the other, to exempt one from the operation and effect of the law and impose drastic and prohibitive conditions and regulations upon the other.

In holding the law complained of as unconstitutional, Judge W. P. James, of the District Court of Appeal of the state of California, Second Appellate District, delivered the following opinion: "The act in terms first proposes to include within

its regulatory and penal provisions the practice of treating the sick and infirm, of whatever kind may be the infirmity or ailment, and of whatever sort the remedy. It is made a misdemeanor for a person to practice, or attempt to practice, or hold himself out as practicing any system or mode of treating the sick or afflicted, or to diagnose, treat, operate, or prescribe for any disease, injury, deformity, or other mental or physical condition, without having obtained the certificate issued by the board of medical examiners. Then by express declaration it is provided that the act shall not be construed to "regulate, prohibit or to apply to any kind of treatment by prayer, nor to interfere in any way with the practice of religion." The sense of this phrase, to my mind, may be expressed by saying that the act shall not be construed as intended to regulate, prohibit, or apply to any person who treats the sick or afflicted by prayer. The provision relating to religion is of no real effect, for the "practice" of a religion has not yet been commercialized in the sense that its tenets aim toward healing the sick of disease as its main purpose. It may be here noted that the prohibitory words of the act make it unlawful for any of those who fall within its description to diagnose disease, in which case the offenders may neither intend to treat the sick person or intend to prescribe for him in any

way. In that case the question of injury to a patient by misuse of remedies or appliances is not involved. However, except for the saving clause in favor of the practitioner by prayer, the act applies to every person who enters the field for the alleviating of human suffering, mental or physical, or of diagnosing ailments. It includes the masseur who treats by manipulation of the body with his hands and so relieves the aching joints of the rheumatic or the neuralgic pains of the nervous person, it includes those who may hold themselves out as being able or willing to treat corns or bunions, for who shall arise to say that an aching corn on the foot is not an ailment which demands and insists upon relief? It includes all sorts of mental healers under whatsoever name they may practice their theories; it affects those who claim to be able to relieve human suffering by the laying on of hands, or through their magnetic or electrical touch. And among all of these kindred modes of treating the sick the man or woman who bases his or her claim of healing power on the virtue of prayer and advertises that as his or her business, is exempt from the provisions of the act and is afforded a monopoly favored by the law in the practice of drugless treatment of disease. Such a person may diagnose the disease that he is to treat without falling under the opprobrium of the

law. This none of his fellow practitioners of drugless faith may do unless armed with the certificate issued by the board of medical examiners, which requires also, as a prerequisite, that certain courses of study shall have been pursued. By inference it must be concluded that the legislature, in drafting this act, determined that the practitioners of the exempted class were either qualified to engage in the business without examination as to the knowledge possessed by them of physical anatomy, etc., or that their methods of practice could not in any case produce harm to the individual. Of course the first suggested inference would be altogether unjustifiable to be made as a legislative determination, for there appears no natural or logical reason upon which to found it. Neither is the second deduction more justifiable when the purposes for which such acts are allowed are considered. Laws of the kind here under consideration are designed, presumptively, at least, not only to protect the sick and infirm from the injurious effects of ill-advised treatment for their ailments and diseases, but also to prevent the credulous sick from being imposed upon and to allow themselves to be deceived into the belief that a treatment that may be harmless in its direct effect upon them is beneficial, and so believing be mulcted of money while their disease may be growing worse for

lack of intelligent and competent attention. And why, if a drugless practitioner of the prohibited classes may not diagnose a case, even though he does not treat it, nor intend to treat it, should a practitioner who uses prayer as his announced panacea be allowed to practice diagnosis relieved of all penalties? It is not sufficient to say that because the remedy of prayer may be deemed not to harm the patient, the legislature based their exception upon a rational and satisfactory reason, for the causes which I have stated. A Washington decision states in comprehensive terms the limitations upon legislatures when enacting laws of this nature: "It is within the power of the legislature to pass such laws as will protect the people from ignorant pretenders, and secure them the services of respectable, skilled and learned men, although it is not within the power of the legislature to discriminate in favor of any particular school of medicine. When intelligent and educated men differ in their theories, the legislature has no power to condemn the one or approve the other, but it may require learning and skill in the school of medicine which the physician professes to practice." (State v. Carey, 30 Pac. 729.) Should it be argued that the construction which I have given to the clause providing that the provisions of the act should not be construed to "regulate or to apply to any kind of

treatment by prayer" is too broad, and that such proviso exempts only the treatment by such means and leaves the practitioner amenable to the other prohibitory sections of the act, such as forbid diagnosis, prescribing, etc., no different conclusion, to my mind, is suggested as to the special nature of the law. I have called attention to the reasons commonly given in the decisions which afford proper ground upon which to uphold legislation of this class. Can the legislature arbitrarily declare that the welfare of the public demands that in order to prevent the cerdulous sick from being imposed upon or injured through improper treatment of their diseases, all drugless practitioners should hold certificates showing them to have acquired certain knowledge of anatomy, etc., except that as to those practitioners using prayer as a mode of treatment no such preparatory knowledge is or should be required? To me the bare statement of the proposition suggests its own answer. In my opinion the provision of the act applying to the class denominated "drugless healers" is special and discriminatory, and therefore void.

The requirement that the drugless practitioners who fall within the regulatory provisions of the act shall be examined as to their knowledge of anatomy and histology, physiology and general diagnosis, pathology and elementary bac-

teriology, obstetrics and gynecology, toxicology and elementary chemistry, hygiene and sanitation, seems to me, as applied to those who may practice many of the well-known simple forms of treatment, to be unreasonable. A proper classification of the different practitioners as to their means and methods employed, exacting a degree of knowledge on those subjects which are involved in such practice, might answer to a valid requirement. It would seem that many of the subjects on which examination is required to be had would have not even a remote connection with the practice to be followed by the healer. In a case where like conditions of the law as applied to the masseur were considered by the Supreme Court of North Carolina, the court there said: "Patients have a right to use such methods as they wish, and the attempt to require an examination of the character above recited for the application of such treatments is not warranted by any legitimate exercise of the police power." State v. Biggs, 133 N. C. 729. It will not be profitable to enter into a dissertation upon the extent to which the police power of a state can go. That power is sometimes likened to the right of self-defense in the individual. It is broad and has to do with all laws or enactments of the people of the state, in whatever form they may be expressed, which will make for the security, comfort,

health and well being of the inhabitants. In the exercise of it, however, the restraint of the federal Constitution lends a compelling pressure, and no measure may be justified under police power which unduly interferes with the liberty of the citizen to pursue, unmolested and unrestrained and by his own means and methods, any calling of a lawful and proper nature. The main contention advanced in the briefs against the validity of the act, to-wit: that it is special legislation, and therefore unconstitutional and void, seems to be well founded. If that position is correctly taken, the question of the reasonableness of acts like that here considered had best be left until a case is presented where that proposition is given full attention in the arguments. * * *"

The Fourteenth Amendment was undoubtedly intended that not only that there should be no arbitrary deprivation of life and liberty, or arbitrary spoilation of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; that they should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; that no impediment

should be interposed to the pursuits of any one, except as applied to the same pursuits by others under like circumstances; that no greater burdens should be laid upon one than are laid upon others in the same calling and condition.

Justice Swaine of the United States Supreme Court in the case of *In re* Tiburcio Parrot, 1 Fed. 481, held "Labor is property, and, as such, merits protection. The right to make it available is next in importance to the rights of life and liberty. It lies, to a large extent, at the foundation of most other forms of property." And adding: "In our country, hostile and discriminating legislation by a state against persons of any class, sect, creed or nation, in whatever form it may be expressed, is forbidden by the Fourteenth Amendment of the Constitution."

In the case of the State versus Biggs, 133 North Carolina, page 729, Judge C. J. Clark rendered the following opinion:

"The special verdict found that the defendant advertised himself as a non-medical physician; that he held himself out to the public to cure disease by a system of drugless healing and treats patients by said system without medicine, claiming not to cure by faith; that he advertises to cure by natural methods without medicine or surgery. The only acts that he is

found by the verdict to have performed are that he administers massage, baths and physical culture, manipulates the muscles, bones, spine and solar plexus, and kneads the muscles with the fingers of the hand. He writes no prescriptions as to diet, but advises his patients what to eat and what not to eat; all the above treatment is administered to the exclusion of drugs. It was admitted that the defendant was not licensed by the State Medical Board, and claims no exemption under the provisions of the Act of 1903, as a nurse or midwife, nor as one curing by prayer, and then there is the important finding that the defendant charges a fee or reward for his services, and has treated patients by the above treatment and received payment therefor since the passage of chapter 697, Laws of 1903, 'to define the practice of medicine and surgery.'"

Section 3124 of the Code requires that every person who applies for license to practice medicine or surgery or any of the branches thereof shall stand an examination in anatomy, physiology, surgery, pathology, medical hygiene, chemistry, pharmacy, *materia medica,* therapeutics, obstetrics and the practice of medicine. There was added by chapter 117, Laws of 1885, the following provision: "And any person who shall begin the practice of medicine or surgery

in this state for fee or reward, after the passage of this act, without first having obtained license from said Board of Examiners (meaning the State Board of Medical Examiners) shall not be entitled to sue for or recover before any court any medical bill for services rendered in the practice of medicine or surgery or any of the branches thereof, but shall also be guilty of a misdemeanor and upon conviction thereof shall be fined not less than $25 or more than one hundred dollars or imprisoned at the discretion of the court for each and every offense."

The constitutionality of this act has been vigorously assailed in the courts on the ground that every one had an inalienable right to life, liberty and the pursuit of happiness," as our great Declaration phrases it, and that by that guarantee it is the right of every one to earn his livelihood by pursuing any calling or vocation not unlawful, and that to place his liberty to do so within the power of a committee chosen by those already pursuing any given calling would be to infringe upon section 7, article 1 of our state Constitution, which forbids exclusive privileges and emoluments to any set of men, and section 31 of the same article, which prohibits "monopolies and perpetuities." Of late years there has been added the argument that such act is also obnoxious to the Four-

teenth Amendment of the Constitution of the United States, which prohibits any state "to deny to any person equal protection of the law."

There was undeniably great force in the argument on that side. The law-making power slowly in this state and in others yielded to the view that it could or should pass such act. In 1858-59, chapter 258, it first incorporated the State Medical Society, and authorized the above examination, and prohibited any one to practice medicine or surgery or prescribe for the cure of diseases for fee or reward without such license, but was careful to add a proviso that no one who should practice without such license should be guilty of a misdemeanor, the only penalty being that if he practiced on credit he could not recover his fees in the courts. The law remained thus till the above-recited act, passed in 1885, and which was made prospective. The constitutionality of this last statute was fully considered, and after a most able argument against it by counsel was sustained by this court, but not without great hesitation, and upon the ground solely that the act was an exercise of the police power for the protection of the public against incompetents and imposters, and in no sense the creation of a monopoly or special privilege. State v. Call, 121 N. C. 646. If the object of the act could be construed as intended to give special and exclusive privileges

to a special body of men, and not solely and in truth for the protection of the public, the legislature was prohibited by the Constitution from enacting it, nor could the legislature restrict the cure of the body to the practice of medicine and surgery, or establish any state system of healing. State v. McKnight, 131 N. C. 723.

After these decisions moderation and wisdom would have suggested that the matter rest. Those who wish to be treated by practitioners of medicine and surgery had the guarantee that such practitioners had been duly examined and found competent by a board of gentlemen eminent in that high and honorable profession, and those who had faith in treatment by methods not included in the practice of medicine and surgery as usually understood, had reserved to them the right to practice their faith and be treated if they chose by those who openly and avowedly did not use either surgery or drugs in the treatment of diseases. The courts have declared that they possessed this right, and that the legislature could not, under the Constitution, restrict all healing to any one school of thought or practice. What is "the practice of medicine and sugery" is as well understood, and it limits, as the practice of dentistry. The courts have also held that of the many schools of medicine and surgery, the legislature could not prescribe that any one was orthodox

and others heterodox, but that those professing the different systems—"allopathic," "homeopathic," "Thompsonian" and the like—should be examined upon a course, such as is taught in the best colleges of that school of practice, but that it is not essential that a member of each, or of any special school, should be upon the Board of Examiners.

At the last session of the General Assembly the following act (1903, ch. 697), was passed amendatory of section 3122 of the Code: "For the purpose of this act the expression 'practice of medicine and surgery' shall be construed to mean the management for fee or reward of any case of disease, physical or mental, real or imaginary, with or without drugs, surgical operation, surgical or mechanical appliances, or by any other method whatsoever; provided that this shall not apply to midwives nor to nurses; provided, further, that applicants not belonging to the regular school of medicine shall not be required to stand an examination except upon the branches taught in their regular colleges, to-wit, the osteopaths, shall be examined only upon descriptive anatomy, general chemistry, histology, physiology, urinalysis and toxicology, hygiene, regional anatomy, pathology, neurology, surgery, applied anatomy, bacteriology, gynecology, obstretrics and physical diagnosis; provided this act shall not apply to any person

who ministers to or cures the sick or suffering by prayer to Almighty God, without the use of any drug or material means."

Chief Justice Pearson in McAden v. Jenkins, 64 N. C. 801, noted as of common knowledge, and reiterated in Railroad v. Jenkins, 68 N. C. 505, that railroad charters are drafted by promoters and hence should be construed most strongly against the grantees and in the interest of the public. Though there may be no promoters here, the same rule applies to this act, amending the charter of this corporation, in whose supposed interests it was evidently drafted, and not solely in the interest of the public. Under the guise of construction of those well understood terms, the practice of medicine and surgery, the act essays to provide that the expression "practice of medicine and surgery shall be construed to mean the management 'for fee or reward' of any case of disease, physical or mental, real or imaginary, with or without drugs, surgical operation, surgical or mechanical appliances, or by any other method whatsoever." That is, the practice of surgery and medicine shall mean practice without surgery or medicine if a fee is charged. If no fee is charged, then the words "surgery and medicine" drop back to their usual and ordinary meaning, as by long usage known and ac-

customed. Where, then, is the protection to the public, if such treatment is valid when done without fee or reward? Yet, unless the act confers, and is intended solely to confer, protection upon the public it, is invalid. The legislature cannot forbid one man to practice a calling or profession for the benefit or profit of another.

Again, the act means more than its friends probably intended, for it says: "Any case of disease, phsical or mental, real or imaginary." Is not a disease of the eye physical, and is not a disease of the ear, or of the teeth, or a headache, or a corn, physical? Then every dentist and aurist and occulist is indictable unless he has also license from the State Medical Society as an M. D., as is also every corn doctor who relieves aching feet, and every peripatetic of stentorian lungs on the court house square who banishes headache, real or imaginary, by rubbing his hands over some credulous brow. He, too, must be an M. D. Then there is the closing expression forbidding treatment for fee or reward by other than an M. D., by any other method whatsoever." This would take in all the old women and the herb doctors, who, without pretending to be professional nurses, relieve much human suffering, real or imaginary, for a small compensation. Then it is forbidden to relieve a case of suffering, physical or mental, in

any method unless one is an M. D. It is not even admissible to minister to a mind diseased in any method or even dissipate an attack of the blues without that label duly certified. Is not this creating a monoply and the worst of monopolies that diseases shall not be cured or alleviated, whether real or imaginary, mental or physical, though without medicine or surgery, if for a fee, unless one has undergone an examination on anatomy, physiology, surgery, pathology, medical hygiene, chemistry, pharmacy, *materia medica,* therapeutics, obstetrics and the practice of medicine? Such examination is eminently proper for one who holds himself out as an M. D., and those who wish to employ an M. D. should certainly have the guarantee that is given by his license that the M. D. is competent. But how about those who are too poor or too ignorant or to perverse to wish that kind of treatment? Is it requisite that the man who treats a diseased ear shall really be competent in obstetrics, or that it is a penalty to treat a disease of the eye unless the operator understands chemistry, or that it is indictable in this state to remove corns or to plug teeth without full knowledge of the *materia medica,* or to banish headache by the application of the hands without having passed a satisfactory examination on anatomy, or to apply a fomentation without being able to pass upon

therapeutics, or to sell a little herb tea for the stomach-ache without being scientifically versed in pathology and physiology? The act is too sweeping. Besides, the legislature could no more enact that the practice of medicine and surgery shall mean practice without medicine and surgery than it could provide that two and two make five, because it cannot change a physical fact. And when it forbade all treatment of all diseases, mental or physical, without surgery or medicine, or by any other method, for a fee or reward, except by an M. D., it attempted to confer a monopoly on that method of treatment, and this is forbidden by the Constitution.

Our early legislation naturally gave physicians no special privileges, but it was directed solely to fixing a limitation upon their charges and providing penalties for malpractice. Were a monopoly of all treatment of diseases conferred upon M. D.'s it would necessarily follow that the legislature would have to prescribe their scale of charges again. That matter could not, with due regard to the public interest, be left to a monopoly. The medical profession merited and obtained a due share of prosperity prior to above statute of 1903 and will receive no great detriment because the defendant cannot be punished under its provisions.

Those not M. D.'s contend that the allopathic system of practice is contrary to the discoveries of science and injurious to the public. Some M. D.'s doubtless believe that all treatment of disease except by their own system is quackery. Is this point to be decided by the M. D.'s themselves through an examining committee of five of their own number, or is the public the tribunal to decide by employing whom each man prefers, whether allopath, homeopath, osteopath or the defendant? The law says that the M. D.'s may examine and certify whether an applicant is competent to be one of their number, and no one can practice medicine and surgery without it, but they cannot decide for mankind that their own system of healing is now and ever shall be the only correct one and that all others are to be repressed by the strong arm of the law. This act admits Christian Scientists to practice to cure diseases without such examination. By what process of reasoning can massage, baths and the defendant be excluded? In the cure of bodies, as in the cure of souls, "orthodoxy is my doxy, heterodoxy is the other man's doxy," as Bishop Warburton well says. This is a free country, and any man has a right to be treated by any system he chooses. The law cannot decide that any one system shall be the system he shall use. If he gets improper treatment for children or others under his care,

whereby they are injured, he is liable to punishment, but whether it was proper treatment or not is a matter of fact to be settled by a jury of his peers and not a matter of law to be decided by a judge nor prescribed beforehand by an act of the legislature.

The practice of medicine and surgery, in the usual and ordinary meaning of that term, is of the highest antiquity and dignity. In the Code of Hammurabi, King of Babylon, fifteen centuries older than the Code of Moses, and which, engraved on a column of black diorite, was but recently dug up at Susa in ancient Elam, there are found (sections 215-225) regulations of the medical profession, fixing a scale of fees and penalties for malpractice. Physicians are mentioned in both the Old and New Testaments. Jeremiah asks: "Is there no balm of Gilead? Is there no physician there?" The public have a right to know that those holding themselves out as members of that ancient and honorable profession are competent and duly licensed as such. The legislature can exert its police power to that end, because it is a profession whose practice requires the highest skill and learning. But there are methods of treatment which do not require much skill and learning, if any. Patients have a right to use such methods if they wish, and the attempt to require an examination of the character above recited for the

application of such treatment is not warranted by any legitimate exercise of the police power. The effect would be to prohibit to those who wish it those cheap and simple remedies, and deprive those who practice them of their humble gains, by either giving a monopoly of such remedies to those who have the title of M. D., or prohibiting the use of such remedies altogether, neither of which results the legislature could have contemplated, and both of which are forbidden by the provisions of the Constitution above cited.

In this case the defendant is found guilty of the following acts, and no more:

(1) Administering massage, baths and physical culture.

(2) Manipulating muscles, bones, spine and solar plexus.

(3) Kneading the muscles with the fingers of the hand.

(4) Advising his patients what to eat and what not.

And all this without prescriptions, without any drugs or surgery. These acts, by the terms of the statute, are harmless and not indictable unless done for fee or reward. There is nothing in this treatment that calls for an exercise of the police power by way of an examination by a learned board in obstetrics, therapeutics, *materia medica* and the other things, a knowl-

edge of which is so properly required for one who would serve the public faithfully and honorably as a doctor of medicine.

It is not only in the scope of the police power for the state to regulate the practice of medicine and surgery, and to throw around the public any reasonable protection against unfit members of that honorable profession and provide against malpractice, but the General Assembly can prohibit any pretended art of healing which is calculated to deceive and injure the public. It is also within its power to protect the public against the ignorant and vicious who profess knowledge and skill in any art or profession of healing in which technical knowledge and learning are required to safely and properly practice it. But it is not found here that the defendant is deceiving and injuring the public or is ignorant and incompetent, to the detriment of the public, in the application of the methods he uses. It may be that if he were not there some of the patients might call in an M. D., but that is due possibly to the ignorance or perversity of the patients who may prefer the defendant's methods and scale of fees. The police power does not extend to such cases.

The law is thus stated in Lawton v. Steele, 152 U. S., pp. 137, 138: "The legislature may not, under the guise of protecting public inter-

ests, arbitrarily interfere with private business or impose unusual or unnecessary restrictions upon lawful occupations. In other words, its determination of what is proper exercise of its police power is not final or conclusive, but is subject to the provision of the courts." After citing cases, it is said, on page 138: "In all those cases the acts were held to be invalid as involving an unnecessary invasion of the rights of property and a practical inhibition of certain occupations harmless in themselves and which might be carried on without detriment to the public interests." See also State v. Pendergrass, 106 N. C. 667; Ohio v. Gardner, 58 Ohio St. 588, 41 L. R. A. 689.

License is required for the practice of pharmacy, of dentistry, of law, and many other skilled professions. We have a state system of law, for the law is the state, and laws are prescribed by the legislature, and we also have a state system of education, yet it is not indictable for one not a lawyer to draw wills, deeds, bills of sale or any other legal instrument whatever, nor is it made punishable to settle litigation out of court by arbitration or otherwise without the aid of a lawyer, nor to teach in other than the state schools. Though there are many methods of treating disease, among which the legislature is not authorized to select one as the state system, excluding all others, yet this act, if valid,

would make it punishable by law to charge a fee for treatment of any disease, real or imaginary, mental or physical, by any method whatever, unless the party has been admitted by a committee from one school of treatment upon examination of that system, thus denying mankind any relief from pain and suffering except at the hands of that particular school of medical thought. It may be, and probably is, the best system. But that is a matter which must be decided by those who seek and must pay for the relief—not by the M. D.'s themselves nor by the courts. Judges are lawyers and are not competent to decide, except for themselves as individuals, which is the best system of treatment, and those practitioners who eschew medicine and surgery may well object to leaving the question whether medicine and surgery is the only permissible method of treatment to be decided by the practitioners of that method.

The defendant is not charged nor shown to be an osteopath, and disclaims being one. His learned counsel contends that the Act of 1903, chapter 697, is further unconstitutional because of the following (quoted from his brief): "There is no provision for the examination of any but allopaths and osteopaths. It provides that all persons, except midwives, nurses and those who profess to heal by prayer, who min-

ister to the sick for fee or reward, 'by any other method whatsoever,' shall be construed to be practicing medicine or surgery, and then follows the language: 'Provided further, that applicants not belonging to the regular school of medicine shall not be required to stand an examination except upon the branches taught in their regular colleges, to-wit, the osteopaths shall be examined only upon descriptive anatomy, general chemistry, histology, physiology, urinalysis and toxicology, hygiene, regional anatomy, pathology, neurology, surgery, applied anatomy, bacteriology, gynecology, obstetrics and physical diagnosis.' The osteopath is required to stand an examination in surgery and every other branch that those belonging to the regular school of medicine are required to be examined in, except pharmacy, *materia medica,* therapeutics and the practice of medicine, and in addition he is required to stand an examination in branches that the regular medical student is not required to be examined on, as follows: histology, urinalysis and toxicology, regional anatomy, neurology, bacteriology, gynecology and physical diagnosis. But it is remarkable that he is not required to pass examination in the branches that his profession recognizes and teaches to be of special importance in the practice of osteopathy, such as prin-

ciples of osteopathy, osteopathic manipulations and osteopathic diagnosis.

As his client is not an osteopath, we are not called upon in this case to pass upon the alleged discrimination against osteopaths in the prescribed course of study. But if it be objected that we have only shown that the defendant's practice did not call for the examination required, as above set out, for an allopath, it may be as well to say that the acts of which he was convicted of doing for a fee, to-wit, using massage, baths, physical culture, manipulating muscles, bone, spine and solar plexus, and advising his patients as to diet, could be done as safely to the public, so far as shown, without an examination on histology, urinalysis and toxicology, bacteriology, neurology and gynecology, which are some of the things added to the course by the aforesaid act, for the comfort and convenience of those wishing to obtain license to practice osteopathy, and of course only to protect the public against incompetents in that line of practice.

It is possible, however, that an expert knowledge of gynecology is not essential in administering baths, and there is room for serious doubt whether bacteriology and toxicology are connected with massage in any way.

The term "practice of medicine and surgery" embraces probably the larger and certainly by

far the most profitable part of the treatment of diseases, but is not co-extensive with the latter term and cannot be made so unless surgery and medicine are adopted as the state system of treatment, a monopoly, and all other methods are made indictable. On the other hand, the State Medical Society would hardly wish to broaden out so as to take in all methods of treatment of diseases, for this would be to take in practitioners and practices which they would not wish to recognize. All the law so far has done or can do is to require that those practicing on the sick with knife and drugs shall be examined and found competent by those "of like faith and order." Doctor Oliver Wendell Holmes, in an address before the Medical Society in Massachusetts, said: "If the whole *materia medica* was sunk to the bottom of the sea it would be all the better for mankind and all the worse for the fishes." An eminent medical authority in this state has said that out of twenty-four serious cases of disease three could not be cured by the best remedies, three others might be benefited, and the rest would get well anyway. Stronger statements could be cited from the most eminent medical authorities the world has known. Medicine is an experimental, not an exact, science. All the law can do is to regulate and safeguard the use of powerful and dangerous remedies, like the knife and drugs,

but it cannot forbid dispensing with them. When the Master, who was Himself called the Good Physician, was told that other than His followers were casting out devils and curing diseases, He said: "Forbid them not."

Judgment reversed.

The opinion of Judge Clark, of the Supreme Court of the state of North Carolina, in the case of the State versus McKnight, to which Judge James refers in his opinion, we quote in full as follows: "Chapter 117, Laws 1885, amending the code, Sec. 3132, under which this bill was drawn, reads as follows: 'Section 3122. And any person who shall begin the practice of medicine or surgery in this state, for fee or reward, after the passage of this act, without first having obtained license from said board of examiners, shall not only be entitled to sue for or recover, before any court, any medical bill for services rendered in the practice of medicine or surgery, or any of the branches thereof, but shall also be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than twenty-five dollars nor more than one hundred dollars, or imprisoned at the discretion of the court for each and every offense: Provided, that this act shall not be construed to apply to women who pursue the avocation of midwife; and provided

further, that this act shall not apply to regularly licensed physicians and surgeons resident in a neighboring state.'" This last clause has since been modified. Laws 1889, Chapter 181.

The constitutionality of this act was discussed and affirmed. State v. Call, 121 N. C. 643. The simple question, therefore, upon the facts set out in the special verdict is whether one who practices "osteopathy" is indictable if he has not procured the license required for any one by the above section before beginning "the practice of medicine or surgery."

The special verdict finds that the defendant's "treatment of his patients did not consist in the administration of drugs or medicines, but in manipulation, kneading, flexing and rubbing the body of his patients, and in the application of hot and cold baths, and in prescribing rules for diet and exercise, * * * that the defendant was engaged in the general practice of osteopathy, and professed to effect the cure of diseases by the practice of that science; that he also practiced hypnotism and suggestion under hypnotism." It is also found that "upon two occasions he used a small surgeon's knife in opening an abscess in the mouth of one Shedd, but charged no fee for his services."

The only surgery was "without fee or reward," an act of charity, and that was inci-

dental and not in the usual course of the practice of osteopathy. It can not be said that one "practices medicine and surgery" when he uses neither drugs, medicine nor surgery.

Section 3124 required the "Board of Medical Examiners" to examine all applicants "to practice medicine or surgery," in "anatomy, physiology, surgery, pathology, medical hygiene, chemistry, pharmacy, *materia medica*, therapeutics, obstetrics and the practice of medicine," almost all of which would be useless knowledge to exact of an osteopath who declines to use medicine, drugs or surgery, and whose treatment consists solely in kneading, flexing and rubbing the body, applying hot and cold baths, and prescribing diet and exercise.

It cannot be conceived that the Legislature would require the above examination for a profession which eschews the use of drugs and surgery. The medical society of this state being "allopaths," would certainly not recognize an "osteopath" as one of their body, any more than they would a "homeopath," nor license any one to pursue that calling with their diploma as his authority so to do, and if they would not, and we were to hold it indictable to practice osteopathy without such license, it would be a judicial prohibition upon the exercise of that phase of healing.

In Smith v. Lane, 31 N. Y. 632, construing a statute very similar to ours, it is said: "To entitle a person to a certificate under this provision, it would be necessary that he should be qualified either to practice medicine or surgery in all its branches. If that was not made to appear, he could receive no certificate under the provisions of this act. For that reason, it appears to be quite manifest that the object of the Legislature in the enactment of this chapter was only to provide for regulating the practice of medicine or surgery, as those terms are usually and generally understood, and confining them to such significance it is evident that they would not include the occupation of the plaintiff. The practice of medicine is a pursuit very generally known and understood, and so also is that of surgery. The former includes the application and use of medicines and drugs for the purpose of curing, mitigating or alleviating bodily diseases, while the functions of the latter are limited to manual operations usually performed by surgical instruments or appliances. It was entirely proper for the Legislature, by means of this chapter, to prescribe the qualifications of the persons who might be entrusted with the performance of these very important duties. The health and safety of society could be maintained and protected in no other manner. * * * No such danger could

possibly arise from the treatment to which plaintiff's occupation was confined."

In State v. Leffring, 61 Ohio St. 39, 46 L. R. A. 334, the same conclusion was reached, and also in Nelson v. St. Board Health, 22 Ky. 438, 50 L. R. A. 383. From this last case we learn that osteopathy originated with Dr. A. T. Still, of Kirksville, Mo., 1871, and that at a college of osteopathy in that state, in 1900 (when that opinion was filed) there were over five hundred students from twenty-nine states, besides several from Canada. And there are doubtless other colleges of osteopathy, for the special verdict finds that the defendant exhibited a diploma from the Columbia College of Osteopathy in Illinois.

It is argued to us that the science, if it be a science, of osteopathy is an imposition. Of that, we judicially speaking, know nothing. It is not found as a fact in this verdict. We only know that the practice of osteopathy is not the "practice of medicine or surgery," as commonly understood, and therefore it is not necessary to have a license from the Board of Medical Examiners before practicing it. If it is a fraud and imposition, and injury results, the osteopath is liable both civilly and criminally. Certainly "baths and diet" could be advantageously prescribed to many people, and

rubbing is well enough if the patient is not rubbed the wrong way. The real complaint is that osteopaths restrict themselves to these remedies, and do not resort to drugs and surgery, but that very fact established that they do not violate the law requiring a license to practice medicine and surgery. Doubtless there is an appeal to the imagination, but that is a necessary ingredient in all systems of healing. Who does not know that a prescription by a physician, in whom the patient has implicit confidence, is oftentimes more effective than the same treatment by one in whom he has none, and that at times bread pills and other harmless prescriptions are administered with good results? The aim of medical science, which is now probably the most progressive of all the professions, is simply to "assist nature." Osteopathy proposes to do that by other methods than by the use of medicines or the surgeon's knife.

We attach no weight to the argument that the defendant hung out his sign and advertised himself as "Doctor." The special verdict finds that he had a diploma from a college of osteopathy bestowing that title upon him. There are many kinds of doctors, besides doctors of medicine—as doctors of law, doctors of divinity, doctors of physics, and veterinary doctors, and others still. Besides, in this coun-

try, so far, at least, as titles go, "honors are easy." We know from common knowledge that druggists' clerks are ordinarily addressed as "doctor," Justices of the Peace as usually called "judge" and a teacher of the saltatory art always styles himself "professor," while "Yarborough House Colonels" and "honorables" by courtesy of like tenor are almost as

"Thick as autumnal leaves that strow the brooks,
"In vallombrosa."

Certainly the courts can not abate a man as a nuisance because some one gives him, or he gives himself, a title.

If the General Assembly shall deem osteopathy a legitimate calling, it may see fit possibly to secure educated and skilled practitioners by requiring an examination and license by learned osteopaths of applicants for license, but certainly the examination would be on subjects appropriate to secure competency therein, and not on an entirely different course of learning, such as that prescribed for applicants to practice "medicine or surgery." State v. Gravett, 65 Ohio St. 289, 55 L. R. A. 791. Dentistry is not the "practice of medicine or surgery," but it is a related profession, as is also pharmacy, and each has its prescribed course of examination of applicants for license. Whether the same rights and dignity shall be bestowed

on osteopathy is a matter for the General Assembly, or if it is found to be a fraud and imposition, its exercise is indictable. It seems that it more nearly approximates "nursing" in many respects (though different in others), when taught as a profession, as it now is.

The state has not restricted the cure of the body to the practice of medicine and surgery—"allopathy," as it is termed—nor required that before any one can be treated for any bodily ill, the physician must have acquired a competent knowledge of allopathy, and be licensed by those skilled therein. To do that, would be to limit progress by establishing allopathy as the state system of healing, and forbidding all others. This would be as foreign to our system as a state church for the cure of souls. All the state had done has been to enact that when one wishes to practice "medicine or surgery," he must, as a protection to the public (not to the doctors), be examined and licensed to those skilled in "surgery and medicine." To restrict all healing to that one kind, to allopathy, excluding homeopathy, osteopathy and all other treatments, might be a protection to doctors in "surgery and medicine," but that is not the object of the act, and might make it unconstitutional, because creating a monopoly. The state can only regulate for the protection of the public. There is also "divine science" (which

some one has said is neither divine nor a science), and there may be other methods still. Whether these shall be licensed and regulated, is a matter for the law-making power to determine before any question in that respect can come before the court. Certainly a statute requiring examination and license "before beginning the practice of medicine or surgery" neither regulates nor forbids any mode of treatment which absolutely excludes medicines and surgery from its pathology.

All that the courts can declare upon the facts found in the special verdict is that the defendant's practice is not "the practice of medicine or surgery," and no license from the Medical Board of Examiners is required.

No error."

In line with the foregoing decisions we quote in full the opinion of Judge Bosworth of the Supreme Court of Rhode Island, reported in Lawyers' Reports Annotated, volume 41, page 428, as follows: "The defendant was adjudged probably guilty in the district court of the sixth judicial district upon complaint of Gardnier T. Swarts, secretary of the state board of health. Said complaint which was made under chapter 165, R. I. Gen. Laws, alleges that the defendant, at Providence, on the 26th day of November, 1897, "did then and there practice

medicine and surgery for reward and compensation, without lawful license certificate and authority, and not being then and there duly registered according to law." The defendant upon arraignment, pleaded not guilty, and subsequently, and before judgment, raised a question of the constitutionality of said chapter 165, which question in accordance with the provisions of chapter 250, R. I. Gen. Laws, was certified and transmitted to the appellate division of the Supreme Court for decision.

R. I. Gen. Laws, chap. 165, provides for the registration of physicians, and its object is to regulate the practice of medicine and surgery. Under this chapter, authority to practice medicine and surgery is through a certificate issued by the state board of health, and said board, upon application, and without discrimination against any particular school or system of medicine, is required to issue such certificate to any reputable phyician practicing, or desiring to begin the practice of medicine or surgery in this state, who possesses certain specified qualifications. Section 2 of said chapter, in part, is as follows: "Sec. 2. It shall be unlawful for any person to practice medicine or surgery in any of its branches within the limits of this state, who has not exhibited and registered in the city or town clerk's office of the city or town in which he or she resides,

his or her authority for so practicing medicine as herein prescribed, together with his or her age, address, place of birth, and the school or system of medicine to which he or she proposes to belong." Section 8 of said chapter is as follows: "Sec. 8. Any person living in this state or any person coming into this state, who shall practice medicine or surgery or attempt to practice medicine or surgery in any of its branches, or who shall perform or attempt to perform any surgical operation for or upon any person within the limits of this state for reward or compensation in violation of the provisions of this chapter, shall upon conviction thereof be fined $50, and upon each and every subsequent conviction shall be fined $100 and imprisoned thirty days, or either or both, in the discretion of the court; and in no case, where any provision of this chapter has been violated, shall the person so violating be entitled to receive compensation for services rendered. To open an office for such purpose, or to announce to the public in any other way a readiness to practice medicine or surgery in this state, shall be to engage in the practice of medicine within the meaning of this chapter." For the state, Everett Hall testified, substantially, that he called upon the defendant at his residence, and asked to be cured of malaria; that the defendant said that he was Dr. Mylod;

that the defendant sat looking at the floor, with his eyes shaded, as if engaged in silent prayer, for about ten minutes, and then, looking up, said, "I guess you feel better;" that defendant gave him a book entitled "A Defense of Christian Science"; that he gave defendant $1; that defendant did not recommend nor administer any drug or medicine, nor take his pulse or temperature, nor do any of the things usually done by physicians. Clarence Vaughn, in behalf of the state, testified that he called upon the defendant at his residence on two occasions, and requested to be cured of the grippe; that he gave defendant $1 each visit; that defendant said he was Dr. Mylod; that defendant gave him a card stating the defendant's office hours, and describing defendant as a Christian Scientist, but not in any way referring to defendant as a physician; that defendant did not take his pulse or temperature nor do any of the other things that physicians do in treating disease, but seemed to be sitting in silent prayer; that defendant gave him a book entitled "An Historical Sketch of Metaphysical Healing;" that defendant told him to look, not on the dark side of things, but on the bright side, and to think of God, and it would do him good, since thought governs all things. Dr. Gardnier T. Swarts, secretary of the state board of health, testified that the defendant

is not a registered physician, that said defendant does not have authority to practice medicine in Rhode Island, and that physicians often cure disease without the use of drugs or medicine. For the defense, the character of the Providence Church of Christ, Scientist, was introduced in evidence, and the defendant testified, substantially, that he is the president and first reader or pastor of said church; that said church has been organized and has held regular religious services for seven years; that said church belongs to the sect known as Christian Scientists, in whose behalf God and Jesus Christ and the Bible hold a supreme place; that the principal distinguishing difference between Christian Scientists and other sects consists in the belief of the former regarding disease, which they believe can be reduced to a minimum through the power of prayer; that the public religious services of said church consist of silent prayer, music, reading of the scriptures and of extracts from "Science and Health," by Mary G. Baker Eddy; that he, beyond a greater realization of truth which his longer study of Christian Science may have given him, professed to have no greater power over illness than that possessed by members of his church; that he did not tell the witnesses Hall and Vaughn that he could cure them, nor did he call himself a doctor;

that he did not attempt to cure them by means of any power of his own; that he assured them that it is God alone who heals, acting through the human mind; that all he did was to engage in silent prayer for them, and to endeavor to turn their thoughts to God and towards the attainment of physical perfection; that the efforts made for them were precisely the same in character as those which he makes for his congregation at public services of his church; that he does not practice medicine, nor attempt to cure disease; that he has no knowledge of medicine or surgery; that, as a Christian Scientist, he never recommended to anyone a course of physical treatment; that he has only the method of prayer and effort to encourage hopefulness, for all who come to him in public or private, and whatever disease they imagine they have; and that his ministrations often can be and are rendered as effectively in the absence as in the presence of the beneficiary. Other witnesses were called, but there was no material variance in the testimony except that the witnesses Hall and Vaughn testified that the defendant said he was Dr. Mylod, which testimony was contradicted by the defendant.

The constitutional question raised by the defendant is that under sec. 3, art. 1, R. I. Const., which secures to him religious freedom, he had a right to perform the acts shown by the testi-

mony to have been performed, and that, therefore, said chapter 165, R. I. Gen. Laws, under which said complaint was made, is unconstitutional if, and in so far as, it provides a penalty for the performance of said acts. This question, properly, cannot be considered by the court unless said chapter 165 is sufficiently broad to include within its prohibitive provisions the acts of the defendant, for the defendant cannot question the constitutionality of said chapter unless his rights would be affected by its enforcement. State v. Snow, 3 R. I. 64. There is no testimony tending to show that the defendant practiced or attempted to practice surgery, or that he made any diagnosis or examination to ascertain whether witnesses Hall and Vaughn were suffering from disease, or that he administered or prescribed any drug, medicine, or remedy, or that he claimed any knowledge of disease or the proper remedies therefor. Upon the testimony, the only claim that can be made by the state is that upon a card handed to one of the witnesses appeared the name and office hours of the defendant; that the defendant said he was Dr. Mylod; that he offered silent prayer for the witnesses Hall and Vaughn, who claimed to be suffering from disease; that he gave said witnesses each a book in which, presumably, the principles of Christian Science were taught, explained, and defended; that he told the witness

Vaughn, substantially, to look on the bright side of things, and think of God, and it would do him good; and that he accepted compensation for his services. Did these acts of the defendant constitute the practice of medicine, in violation of chapter 165, R. I. Gen. Laws? It is the duty of the court to give effect to the intention of the law-making power as embodied in the statutes. The legislaure is presumed to mean what it has plainly expressed, and, when it has so expressed its meaning, construction is excluded. It is only when the meaning of a statute is obscure or the words employed are of doubtful meaning, that, in order to give effect to the legislative intention, the duty of construction arises. In the construction of penal statutes a well-established rule is that words and phrases must be taken in their ordinary acceptation and popular meaning, unless a contrary intent appears. While the words of such statutes are not to be restricted in meaning within the narrowest limits, neither are they to be extended beyond their common interpretation; and, if there is a reasonable doubt as to whether the acts done are within the meaning of the statute, the party accused of its violation is entitled to the benefit of that doubt. Endlich, Interpretation of Statutes, sections 329, 330. It follows, therefore, that the acts complained of are excluded from the operation of said chapter 165,

unless the words "practice of medicine," taken in their ordinary or popular meaning, include them, or unless it appears from said chapter that the legislative intent was to give to said words a meaning broader and more inclusive than the popular one.

Medicine, in the popular sense, is a remedial substance. The practice of medicine, as ordinarily or popularly understood, has relation to the art of preventing, curing, or alleviating disease or pain. It rests largely in the sciences of anatomy, physiology, and hygiene. It requires a knowledge of disease, its origin, its anatomical and physiological features, and its causative relations; and, further, it requires a knowledge of drugs, their preparation and action. Popularly, it consists in the discovery of the cause and nature of disease and the administration of remedies or the prescribing of treatment therefor. Prayer for those suffering from disease, or words of encouragement, or the teaching that disease will disappear and physical perfection be attained as a result of prayer, or that humanity will be brought into harmony with God by right thinking and a fixed determination to look on the bright side of life, does not constitute the practice of medicine in the popular sense. The state, however, contends that said chapter 165, taken as a whole, indicates a legislative intention to give to the words

"practice of medicine" a meaning broader than the popular one. In support of this contention it calls attention to the provision contained in section 8 of said chapter that "to open an office for such purpose (that is, for the practice of medicine or surgery) or to announce to the public in any other way a readiness to practice medicine or surgery in this state, shall be to engage in the practice of medicine within the meaning of this chapter." In view of this provision the state contends that to practice medicine is not necessary to use internal or other remedies, nor to make diagnoses, nor to have a patient, but that the opening of an office for the practice of medicine or the announcement of a readiness to engage in such practice, constitutes a practice of medicine; and, therefore, as the statute applies not only to those who actually practice, but also to those who announce in any way a readiness to practice, the state contends that the legislature intended to give a broader than the generally accepted meaning to the words "practice of medicine." We are unable to agree with this contention. Without passing upon the provision referred to, and whatever its significance, it certainly cannot be construed to broaden, in a general sense, the meaning of the words "practice of medicine." The most that can be claimed for it is that it operated to broaden the offense created

by said chapter 165, so that the attempt or the announcement of a readiness to practice medicine becomes equivalent to the actual practice.

The state further calls attention, in support of its contention, to section 6 of said chapter, which provides that "nothing in this chapter shall be so construed as to discriminate against any particular school or system of medicine"; and it argues that, as the statutory prohibition relates to the practice of medicine "in any of its branches," and that as certain diseases—such as insanity and nervous prostration—are treated by the so-called "regular school" without the use of drugs, and that as all schools recognize the study of mental conditions as affecting bodily health as forming a distinct branch of medicine, the legislative intention to give to the words "practice of medicine" a construction sufficiently broad to include the practice of Christian Science is clearly manifest. The words of the provision against discrimination, like the words "practice of medicine," must be taken in their ordinary sense and meaning. It is a matter of common knowledge that among medical men there are defined differences regarding the treatment of disease. These differences have resulted in different schools or systems of medicine. A recognition of the existence of such differences, however, does not broaden the meaning of the words "practice of

medicine" to include the practice of that which, in the popular sense, is not a practice of medicine. Neither does the statutory reference to the practice of medicine "in any of its branches" affect the meaning of the words in question. While it is true that the study and treatment of mental disease constitute one of the departments or branches of medicine in which the influence of the mind over the body is recognized, yet mere words of encouragement, prayer for divine assistance, or the teaching of Christian Science as testified, in the opinion of the court does not constitute the practice of medicine in either of its branches, in the statutory or popular sense. To give to the words "practice of medicine" the construction claimed for them by the state in the opinion of the court, would lead to unintended results. The testimony shows that Christian Scientists are a recognized sect or school. They hold common beliefs, accept the same teachings, recognize as true the same theories and principles. If the practice of Christian Science is the practice of medicine, Christian Science is a school or system of medicine, and is entitled to recognition by the state board of health to the same extent as other schools or systems of medicine. Under said chapter 165 it cannot be discriminated against, and its members are entitled to certificates to practice medicine provided they possess the stat-

utory qualifications. The statute, in conferring upon the state board of health authority to pass upon the qualification of applicants for such certificates, does not confer upon said board arbitrary power. The board cannot determine which school or system of medicine, in its theories and practices, is right; it can only determine whether the applicant possesses the statutory qualification to practice in accordance with the recognized theories of a particular school or system. It would be absurd to hold that under said chapter 165, which provides against discrimination, the requirements necessary to entitle an applicant to a certificate were such that the members of a particular school or system could not comply with them, thus adopting a construction which would operate, not as a discrimination only, but as a prohibition. On the other hand, to hold that a person who does not know or pretend to know anything about disease, or about the method of ascertaining the presence or the nature of disease, or about the nature, preparation, or use of drugs, or remedies, and who never administers them, may obtain a certificate to practice medicine, is to hold that the operation of the statute is to defeat the beneficial purposes for which it was enacted.

The cases cited by the state do not sustain its contention. In Nelson v. Harrington, 72

Wis. 591, 1 L. R. A. 719, the plaintiff brought suit against the defendant, who was a clairvoyant physician, to recover damages for alleged unskillful treatment. In testimony it appeared that the defendant held himself out as a healer of disease, and accepted compensation; that he determined the nature of the disease for which he treated the plaintiff and the character of the remedies he administered, while in a mesmeric state or trance condition. The court held that the defendant was bound to exercise reasonable skill, and that the knowledge of the plaintiff of his methods was no defense to the action. In Bibber v. Simpson, 59 Me. 181, which was an action brought to recover compensation for services, the opinion of the court is as follows: "The services rendered were medical in their character. True, the plaintiff does not call herself a physician, but she visits her sick patients, examines their condition, determines the nature of the disease, and prescribes the remedies deemed by her most appropriate. Whether the plaintiff calls herself a medical clairvoyant, or a clairvoyant physician, or a clear-seeing physician, matters little; assuredly, such services as the plaintiff claims to have rendered purport to be, and are to be deemed, medical and are within the clear and obvious meaning of Rev. Stat. 1871, chap. 13, sec. 3, which provides that "no person except a

physician or surgeon, who commenced prior to February 16, 1931, or has received a medical degree at a public medical institution in the United States, or a license from the Maine Medical Association, shall recover any compensation for medical or surgical services, unless previous to such services he had obtained a certificate of good moral character from the municipal officers of the town where he then resided." The plaintiff has not brought herself within the provisions of this section and cannot maintain this action." In Wheeler v. Sawyer (Me. 1888), 15 At. 67, the plaintiff, a Christian Scientist, brought suit to recover for services. Section 9, chap. 13, Rev. Stat. 1883, is the same as section 3, chap. 13, Rev. Stat. 1871, except that it does not relate to physicians and surgeons practicing prior to February 16, 1831. The plaintiff had received the certificate of good moral character required by statute. The court said: "We are not required here to investigate 'Christian Science.' The defendant's intestate chose that treatment. and received it and promised to pay for it. There is nothing unlawful or immoral in such a contract. Its wisdom or folly is for the parties, not the court, to determine." In State v. Buswell, 40 Neb. 158, 24 L. R. A. 68, the defendant was indicted for the unlawful practice of medicine. In Nebraska (Laws 1891, chap. 35) the practice of medicine,

surgery and obstetrics is prohibited except by persons possessing certain qualifications. Section 17 of said chapter 35, in part, is as follows: "Sec. 17. Any person shall be regarded as practicing medicine within the meaning of this act who shall operate on, profess to heal, or prescribe for or otherwise treat any physical or mental ailment of another." The defendant was a Christian Scientist, and the evidence against him upon which the state relied was similar in character to that in the case under consideration. The trial court instructed the jury that, in order to convict the defendant, they must find that the defendant had practiced medicine, surgery or obstetrics, as those terms are usually and generally understood, and the state excepted. The Supreme Court, in sustaining the exception, uses the following language: "Governed by this instruction, the jury could not do otherwise than acquit, for there was no proof to meet its requirement." Again: "The statute does not merely give a new definition to language having already a given and fixed meaning. It rather creates a new class of offenses in clear and unambiguous language, which should be interpreted and enforced according to its terms." Again: "Under the indictment the sole question presented upon the evidence was whether or not the defendant, within the time charged, had operated on or professed to heal,

or prescribe for, or otherwise treat any physical or mental ailment of another." The decision of the Nebraska court, therefore, is that, while the practice of Christian Science is not a practice of medicine as those terms usually and generally are understood, yet, that, under the section above quoted, the practice of Christian Science, being a treatment for physical or mental ailments, is a violation of the law. In Missouri the statute requires that before a person may lawfully practice medicine or surgery he must file a copy of his diploma with the clerk of the county court, and it further provides (Rev. Stat. sec. 6304) that any person, not qualified, who shall practice medicine or surgery, shall not be permitted to recover compensation for services rendered "as any such physician or surgeon." In Davidson v. Bohlman, 37 Mo. App. 576, the plaintiff having brought suit to recover for services, the question raised was whether the services were performed by the plaintiff as a physician. The plaintiff had practiced medicine lawfully for nearly thirty years, first as an allopathic physician and later as an electric physician. He had a diploma from an electric medical college, but had failed to file a copy of it as required by law. The services for which he claimed compensation consisted of electric treatment. The bill for services furnished the defendant described the plain-

tiff as "Dr. T. P. Davidson," and the plaintiff called a medical practitioner to testify to the value of the services in question. The court of appeals, upon the testimony, held that the services were performed by the plaintiff as a physician, and that, not being qualified to practice, he could not recover. The assumption of the title of "doctor," if defendant assumed such title, was not unlawful. Chapter 165 does not, in terms, prohibit the use of the word "doctor" by any person, whatever his business or profession may be. Its use is entirely immaterial in any case, unless under such conditions or circumstances, or in such connection, that it may serve as an announcement or indication of a readiness to engage in the practice of medicine or surgery. The object of the statute in question is to secure the safety and protect the health of the public. It is based upon the assumption that to allow incompetent persons to determine the nature of disease, and to prescribe remedies therefor, would result in injury and loss of life. To protect the public, not from theories, but from the acts of incompetent persons, the legislature has prescribed the qualifications of those who may be entitled to perform the important duties of medical practitioners. The statute is not for the purpose of compelling persons suffering from disease to resort to remedies, but is designed to secure to

those desiring remedies competent physicians to prepare and administer them. See Smith v. Lane, 24 Hun. 632.

The opinion of the court is that the words "practice of medicine" as used in R. I. Gen. Laws, chap. 165, must be construed to relate to the practice of medicine as ordinarily and popularly understood, and that the acts of the defendant do not constitute a violation of said chapter. The court therefore cannot properly pass upon the constitutional question raised, for the rights of the defendant would not be affected by any conclusion at which the court might arrive."

We next quote from the opinion of Judge C. J. Hill, of the Supreme Court of Georgia, in the case of Bennett v. Ware, reported in volume 61, Southeastern Reporter, page 546, as follows:

"The plaintiff in error was arrested on a warrant sworn out by the defendant in error charging him with practicing medicine without a license, in violation of the statutes of this state. On a preliminary investigation he was discharged, and thereupon he brought suit against the defendant in error for malicious prosecution and false imprisonment. In the petition he alleges that at the time of his arrest and incarceration in the common jail he was engaged in the "profession of healing diseases

without the use of medicine," commonly and better known as a "Magic Healer"; that he "heals the sick without the use of medicine in any form or manner whatever, by placing his hands upon that portion of the body that is affected by pain; that this gift or magic power is given him direct from the Lord"; that he made no charge for his services, but accepted such compensation as the gratitude of his patients induced them to voluntarily offer, and that, as a result of his arrest and prosecution for practicing medicine without a license he suffered great humiliation and mortification, lost two days' compensation in "gifts" amounting to $25 per day, was put to an expense of $15 in employing a lawyer to defend him against the untruthful accusation, and, in fact, "lost almost his entire practice"; that his prosecution was malicious and without probable cause, and he claims to have been damaged in the sum of $5,000. A demurrer was filed to this petition on the ground that the allegation showed that the plaintiff was in fact practicing medicine and suggesting remedies for the sick and afflicted, and receiving compensation therefor, without complying with the statutes of the state regulating the practice of medicine, and, therefore, that there was probable cause for his arrest and prosecution. The demurrer was sustained, and this judgment comes to this court.

The direct question for determination is whether the plaintiff, under the facts set out in his petition, was engaged in the practice of medicine as defined by the statutes of this state. He insists that his practice is neither within the letter nor the spirit of the law. By virtue of its police power the state has enacted legislation to protect the public against unfit and incompetent practitioners of medicine, and to prevent the hurtful results of malpractice. A construction of this legislation will determine the issue made by the record. Section 1477 of the Political Code of 1895 prescribed who shall be authorized to practice medicine in this state. The practicing physician is required to have "a diploma from an incorporated medical college, medical school or university," or shall be one who has been "in active practice of medicine since the year 1866" after having attended "one or more full terms at a regularly chartered medical college," "or who was by law authorized to practice medicine in 1866, or shall have been licensed by the medical board." It is further provided that the governor of the state shall appoint three separate boards of medical examiners, each board to consist of five members selected from the three schools or systems of medicine designated by the statute, to-wit, the "regular" or allopathic school, the homeopathic and the eclectic school. Persons who desire to

practice medicine, and who are graduates of any incorporated medical college, school or university requiring the designated course of study, are to be examined by one of these boards, the graduate of a particular school to be examined by the board composed of practitioners of that school. But if the applicant desires to practice a system not represented by any one of the three boards, he may elect for himself the board before which he will appear for examination. When the examination is satisfactory, the applicant is granted a certificate allowing him to practice medicine upon complying with the law in reference to registration. Pol. Code 1895, sections 1479, 1482, 1486. Section 1478 of the Political Code of 1895 undertakes to define the practice of medicine. "The words 'practice medicine' shall mean, to suggest, recommend, prescribe or direct, for the use of any person, any drug, medicine, appliance, apparatus, or other agency, whether material or not material, for the cure, relief or palliation of any ailment or disease of the mind or body, or for the cure or relief of any wound, fracture, or other bodily injury or any deformity, after having received or with the intent of receiving therefor, either directly or indirectly, any bonus, gift or compensation." Section 1490 declares that "any person shall be regarded as practicing medicine or surgery, within the meaning of this

article, who shall prescribe for the sick or those in need of medicine or surgical aid, and shall charge or receive therefor money or other compensation, or consideration, directly or indirectly."

In construing these statutes it is apparent that the law of this state recognized only three systems or schools of medicine—the "regular," the homeopathic, and the eclectic schools. It is impossible for one who desires to practice any other system to do so in this state as a practitioner of medicine, because under the law he cannot procure a license. In other words, the law only proposes to grant a license to practice medicine to the allopath, the homeopath, or the eclectic. It is true the statute provides that, "if the applicant desires to practice a system not represented by any of the" three boards, "he may elect for himself the board before which he will appear for examination" (section 1486); but this is a barren privilege, for none of the three boards can or will examine any applicant except one who has a diploma from a regular medical college, or who proposes to practice one of the three systems. For instance, none of the boards will recognize a diploma of an osteopath issued by an osteopathic school, because such school is not a regular school, and none of the boards would be competent to examine the

osteopathic applicant on the system that he had studied, and the applicant would not be competent to pass an examination in any of the systems represented by the boards, for such systems formed no part of his curriculum. It would be absurd to say that one who practiced the healing art by magnetism, Christian Science, spiritism, hypnotism, mesmerism, or any other form for the treatment of disease based upon a supernatural agency would be entitled to be examined by any one of the medical boards of the state; for the science of medicine is based on natural agencies. We therefore conclude that only those who propose to practice medicine by one of the schools or systems recognized by the statutes of this state are required to have a license.

But it is said that section 1478 of the Political Code of 1895 undertakes to define the practice of medicine, and that this definition embraces the particular practice of the plaintiff in error. He expressly disclaims the use of medicine in any form whatever in his treatment of diseases, and therefore he must be excluded from the specific words of the definition, because he did not suggest, recommend, prescribe, or direct the use of any drug or medicine, appliance, or apparatus. According to his statement, his method consisted simply in laying his hands on the sick at the point or place of pain or disease, and the

healing which followed was by a direct divine agency. Do the words in the statutory definition above given, "or other agency, whether material or not material, for the cure, relief, or palliation of any ailment or disease of the mind or body," embrace an agency of this character? It may be conceded that the words "material or not material" are sufficiently broad to include at least every human or natural agency. But was it intended by the legislature to denominate as a medical agency, whether material or not material, an agency claimed to be supernatural? It is true that faith on the part of the sick is a potent influence in all treatment of disease; but can it be said that faith is an agency? Are the sick who may be cured by magnetism, mesmerism, or hypnotism cured by any medical agency; or is an answer to prayer such an agency and the person who prays practicing medicine? We cannot believe that the legislature intended to include in the practice of medicine what may be called psycho-therapeutics, or any form of the treatment of the sick which makes faith the curative agency. But the words, "other agency," "material or not material," should be construed in obedience to the maxim, *"Noscitur a sociis,"* and the meaning of the word "agency" must be limited by the associated words "drug, medicine, appliance, apparatus." In other words, the word "agency," even as qualified by the

words "material or not material," was intended by the legislature to mean a substance of the general character of a drug or medicine, or surgical apparatus or appliance, the obvious purpose being to protect society against the evils which might result from the use of drugs and medicines by the ignorant and unskillful. The purpose of the act is clearly indicated by its title, "to regulate the practice of medicine." It was not intended to regulate the practice of mental therapeutics, or to embrace psychic phenomena. These matters lie within the domain of the supernatural. Practical legislation has nothing to do with them. If they are a part of man's faith, the right to their enjoyment cannot be abridged or taken away by legislation. However the so-called wisdom of this world may regard these things, it cannot be denied that, long before the Savior told His disciples that in His name they should heal the sick and prevent all manner of diseases by the laying on of hands, the practice of healing by means of prayers, ceremonies, laying on of hands, incantations, hypnotism, mesmerism, and other forms of psycho-therapeutics existed. To the iconoclast who denounces these things as the figments of superstition, or to the orthodox physician who claims for his system all wisdom in the treatment of human malady, we commend the injunction of Him who was called "the

Good Physician," when told that others than His followers were casting out devils and curing diseases: "Forbid them not." What matters the system if, in fact, devils are cast out and diseases are healed?

Going back to the question now under consideration, we deduce the following proposition: That the practice of medicine, defined by the code, *supra,* is limited to prescribing or administering some drug or medicinal substance, or to those means and methods of treatment for prevention of disease taught in medical colleges and practiced by medical practitioners; that the purpose of the act regulating the practice of medicine was to protect the public against ignorance and incompetency by forbidding those who were not educated and instructed as to the nature and effect of drugs and medicine, and for what diseases they could be administered, from treating the sick by such medical remedial agencies; that the law is not intended to apply to those who do not practice medicine, but who believe, with Dr. Holmes, that "it would be good for mankind, but bad for the fishes, if all the medicines were cast into the sea," nor to those who treat the sick by prayer or psychic suggestion. In the language of Chief Justice Clark: "Medicine is an experimental, not an exact science. All the law can do is to regulate and safeguard the use of

powerful and dangerous remedies; * * * but it cannot forbid dispensing with them." "All the law so far has done or can do is to require that those practicing on the sick with drugs * * * sh ll be examined and found competent by those 'of like faith and order.'" State v. Biggs, 133 N. C. 729, 46 S. E. 401, 64 L. R. A. 139, 98 Am. St. Rep. 741. We are therefore clear that plaintiff in error was not a practitioner of medicine in the sense of our statute or in the popular sense; and the fact that he received fees and compensation for treatment in the shape of gifts should not make what would otherwise not be the practice of medicine a violation of the statute regulating such practice, for it must be apparent that, if the mere laying on of hands amounts to the practice of medicine in any sense, it is so without reference to fee or reward.

In the view herewith presented we are strengthened by the decisions of courts of last resort in this country construing similar statutes. Osteopathy, a system of treating disease without the use of medicine in any form (which has made great advances in recent years, and, if the testimony of many intelligent men and women is to be believed, has worked many cures), has been frequently held not to be included in the term "practice of medicine and surgery," and therefore not included in the stat-

ute regulating the practice of medicine and surgery. The earliest case on the subject is that of Smith v. Lane, 24 Hun. 632, in which the Supreme Court of New York held that the practice of osteopathy was not included in the statute, which declared it to be a misdemeanor for any person to practice medicine or surgery who was not authorized to do so by a license or diploma from some chartered medical school, state board of medical examiners, or medical society. This decision was based upon the idea that under the statute of New York no one would be issued a license to practice medicine unless he had a diploma from a regular medical college; the court giving to the words "practicing medicine" their usual, ordinary, and popular significance, and asserting that the purpose of the act was to prevent incompetent or unqualified persons from administering or applying medical agencies, or performing surgical operations that might be dangerous to the health, as well as to the lives, of the persons treated or operated upon, and that the purpose of the statute was to define the use of medicines and the operation of surgery to a class of persons who, upon examination, should be found competent and qualified to follow these professional pursuits, but that no such danger could possibly arise from the treatment of an osteopath, and for that reason no necessity existed for inter-

fering with his pursuit by legislative action. A similar ruling was made in the case of an osteopath by the Supreme Court of Ohio, in the case of State v. Liffring, 61 Ohio St. 39, 55 N. E. 168, 46 L. R. A. 334, 76 Am. St. Rep. 358. The Ohio statute, entitled "An act to regulate the practice of medicine," in defining the "practice of medicine" uses the words, "prescribe, direct, or recommend for the use of any person any drug or medicine, or other agency." That court held that a "system of rubbing and kneading the body," commonly known as osteopathy, for the treatment, cure and relief of diseases and bodily infirmities, was not an "agency" within the meaning of the statute. The Supreme Court of Kentucky, in Nelson v. State Board of Health, 108 Ky. 769, 57 S. W. 501, 50 L. R. A. 383, held that one who practices osteopathy, not using medicine or surgical appliances, is not engaged in the practice of medicine within the meaning of the statute requiring a license for such practice, the language construed being, "to open an office for the practice of medicine, or to announce to the public in any way a readiness to treat the sick or afflicted, shall be deemed to engage in the practice of medicine within the meaning of this act"; and that the language referred only to those essaying to practice medicine proper by the use of drugs. In the case of State v. Mc-

Knight, 131 N. C. 717, 42 S. E. 580, 59 L. R. A. 187, the Supreme Court of that state held that an osteopath was not embraced within the term "practice of medicine." Chief Justice Clark, speaking for the court, says: "The state has not restricted the cure of the body to the practice of medicine and surgery—'allopathy,' as it is termed—nor required that, before any one can be treated for any bodily ill, the physician must have acquired a competent knowledge of allopathy, and be licensed by those skilled therein. To do that would be to limit progress by establishing allopathy as the state system of healing, and forbidding all others. This would be as foreign to our system as a state church for the cure of souls. All the state has done has been to enact that, when one wishes to practice medicine or surgery, he must, as a protection to the public (not to the doctors), be examined and licensed by those skilled in surgery and medicine. The state can only regulate for the protection of the public. There is also 'divine science' (which some has said is neither divine nor science), and there may be other methods still. Whether these shall be licensed and regulated is a matter for the law-making power to determine. Certainly a statute requiring examination and license before beginning the practice of medicine or surgery neither regulates nor forbids any mode of treatment

which absolutely excludes medicine and surgery from its pathology." In a subsequent case the same court, by the same learned jurist, in a very elaborate opinion, reaffirmed the decision in the McKnight case, declaring that one who holds himself out as curing diseases by a system of drugless healing without medicine or prescription, and who charges and receives fees therefor and has no license, is not guilty of practicing medicine or surgery without license. State v. Biggs, *supra*. The Supreme Court of Mississippi, in the case of Hayden v. State, 81 Miss. 291, 33 South. 653, 95 Am. St. Rep. 471, in construing a statute in *totidem verbis* as the statute of this state, declared that it did not apply to an osteopath who used no drug or medicine, and that the word "agency," used in the statute, was not intended to include such treatment. Many other courts, construing statutes substantially similar to ours, have made like decisions.

We admit that there are some decisions that hold the contrary; but we believe that the better rule and one more in consonance with reason and in harmony with the republican character of our institutions is that all statutes for the regulation of the practice of medicine can be sustained only on the ground that they are necessary to protect the public against quack medical practitioners and impostors who pre-

scribe drugs and medicines in treating diseases, and that these statutes are not directed against or intended to include those who eschew the practice of medicine altogether, but advance some new theory, such as osteopathy, for the alleviation of pain and the curing of the sick, or those who heal or pretend to heal the sick by any form of mental therapeutics such as Christian Science, magnetic treatment, hypnotism, and the like. As to the science of osteopathy, it may be remarked that a majority of the states have, by appropriate legislation, recognized it as a legitimate treatment of the sick and as not included within existing statutes regulating the practice of medicine. We think these constitute legislative precedents in favor of the construction which we place upon the act in question; and we think, further, that the medical profession represented by the medical boards of this state who are charged with the duty of enforcing the law which regulates the practice of medicine gives the same construction to the statute in its omission to interfere with the rapidly increasing practice of osteopathy. We would not be understood as meaning to embrace the osteopath in the same class with the magnetic healer. The practice of osteopathy is entirely antithetic in magnetic healing. The former relies entirely upon natural agencies—indeed, we may say physical agencies—while

the latter relies solely upon the supernatural. We cite the decisions construing osteopathy as illustrations of our construction of the statute defining the practice of medicine, the argument drawn therefrom being that if the practice of osteopathy, which does require a knowledge of anatomy, physiology, pathology, and what may be called the fundamentals of medical and surgical practice, is not included in such statutes, the practice of the "magic healer" certainly cannot be. In the language of the Supreme Court of Mississippi: "A wise legislature some time in the future will doubtless make suitable regulations for the practice of osteopathy, so as to exclude the ignorant and unskillful practitioner of the art among them. The world needs, and may demand, that nothing good or wholesome shall be denied from its use and enjoyment." Hayden v. State, *supra*. The Supreme Court of Rhode Island, in the case of State v. Mylod, 20 R. I. 632, 20 Atl. 753, 41 L. R. A. 428, holds that the practice of Christian Science is not the practice of medicine, and is not included within the act regulating the practice of medicine.

We therefore hold that, under the allegations of the petition, the plaintiff in error was not engaged in the practice of medicine, and therefore was not violating the law regulating such practice in this state. But we do not think that the plaintiff in error was entitled to recover

damages for malicious prosecution from the physician who swore out the warrant against him. The question of law involved was sufficiently in doubt, in its application to his practice, to fully warrant a legal investigation of the question; and, in taking out the warrant, the defendant was fully justified by the existence of probable cause, and his act was without malice, and in behalf of the public. Besides, we think that the practice of the plaintiff in error, while not in violation of the statute regulating the practice of medicine, was presumptively an imposition upon the credulity of the public, which might in its consequences result in much injury, and that he was exercising a pretended power of magnetic healing to the deception of the people, and was obtaining their money in the shape of gifts under false pretenses, and we do not think that the law should permit him to recover damages resulting from a legitimate effort on the part of a citizen to test the legality of his practice. We therefore affirm the judgment of the court below in sustaining the demurrer and dismissing the petition.

Judgment affirmed."

We next quote from the opinion of Judge Terrall, of the Supreme Court of Mississippi, in the case of Hayden v. State, reported in volume 81, Mississippi Reports, page 297.

"Hayden was indicted in the Circuit Court of Alcorn county for practicing as a physician without first having been examined and obtained a license so to do. The facts of his alleged offense were admitted to be as follows, and upon this admission the case was submitted to the jury: "That the defendant practiced in this (Alcorn) county what is known as 'osteopathy' in the American School of Osteopathy, in Kirksville, Mo., from which school he is a graduate. That in treating diseases, and in his treatment of the witnesses for the state in this case, to-wit, W. W. Kemp and James A. Carter, he did not use any drug or medicine, but his treatment consisted of manipulating scientifically the limbs, muscles, ligaments and bones which were pressing on the nerves of the blood supply. This treatment was had so that nature would have free action. That in his treatment of diseases or pains he is confined solely to his manipulation as above described. That for said services to said Carter and Kemp he received pay. The witnesses were being treated for rheumatism, and claimed that they have entirely recovered, as a result of this treatment." The above is agreed as being all the facts in the case. The court instructed the jury that, if they believed the admitted facts, they should convict the defendant. This they did, and thereupon the court

imposed a fine of $20 upon the defendant. From this judgment he appeals.

The sole question is whether, under ch. 68, acts 1896, an osteopath is required to be examined and licensed for the practice of his branch of the healing art. The Act of 1896, so far as it is necessary to be known for the right understanding of this case, provides: "That the practice of medicine shall mean to suggest, recommend, prescribe, or direct for the use of any person, any drug, medicine, appliance or agency, whether material or not material, for the cure, relief or palliation of any ailment or disease of the mind or body, or for the cure or relief of any wound or fracture or other bodily injury or deformity, or the practice of obstetrics or midwifery, after having received, or with the intent of receiving therefor, either directly or indirectly, any bonus, gift, profit or compensation." It is perfectly manifest, as we think, from the agreed statement of facts, that Hayden used neither drug nor medicine, as meant by the Act of March 19, 1896. It is equally manifest to us that the legislature, by the use of the words "appliance and agency," did not intend to include such treatment as Hayden gave Carter and Kemp. Our attention has been called to no statement of osteopathic treatment in all the literature upon this subject which characterizes the treatment of an osteopath of

his patient as an appliance or agency. There is an incongruity in such application of such words. Osteopaths themselves do not speak of their manipulation of the nerves, ligaments, bones, and other parts of the human body as being agencies or appliances of any sort or in any sense. In any strict and proper use of such words they cannot be so denominated. If one not an osteopath directs a blow at their art, it is becoming that he use a term of description not to be mistaken. We conclude that the act of March 19, 1896, was not intended to regulate the practice of osteopathy in Mississippi. The course of study and examination prescribed in our law upon this subject seems to make it out as a curriculum of the allopaths. It at least suits them in many respects, but its chemistry and *material medica* are not specially adapted to assist the practice of osteopathy. They make no use of the immense learning contained on these subjects, so highly valued by the regular physician. It appears to us that our legislation upon the subject of the practice of medicine has been framed by the allopaths to suit their views of the medical art, and with the laudable design of excluding from the practice the unskillful and the ignorant; and it was not intended to set up a universal standard of therapeutics, from which none could depart. Courts in other jurisdictions where similar statutes prevail have led

the way for our decision in this case. While our own views of the subject would probably have led us to the conclusion we have reached, yet, if the case had been otherwise, we should have felt ourselves strongly constrained by the authority and reasoning employed by them. We refer to State v. Liffring, 61 Ohio St. 39 (55 N. E. 168, 46 L. R. A. 334, 76 Am. St. Rep. 358); State of Rhode Island v. Mylod, 40 Atl. 753 (41 L. R. A. 428); Nelson v. Board (Ky.), 57 S. W. 501 (50 L. R. A. 383). Alabama, with a statute widely different from ours, holds another view. But Bragg v. State, 32 South. 767, sheds no light upon the construction of our statute.

A wise legislature some time in the future will doubtless make suitable regulations for the practice of osteopathy, so as to exclude the ignorant and unskillful practitioners of the art among them. The world needs and may demand that nothing good or wholesome shall be denied from its use and enjoyment.

The judgment below is reversed, the indictment quashed, and the defendant discharged."

We also quote the opinion in full of Judge Hobson, of the Supreme Court of the state of Kentucky, in the case of Nelson v. State Board of Health, as reported in 118 Ky., page 770, as follows:

"Appellant, Harry Nelson, a citizen of this state, filed his petition in equity in the court below in which he alleged that, after he had taken a regular course of studies at the American School of Osteopathy at Kirksville, Mo., for a term of years, he became a graduate thereof on September 15, 1897; that since that date he has been practicing this system of healing for his support, to the great comfort and relief of disease and sickness, having adopted it as his vocation in life; that osteopathy is a perfect system, having the approval of skilled and scientific men, and schools and colleges in which its doctrines are taught; that appellee was about to have him arrested for practicing osteopathy, or prosecute him therefor, under the act entitled "An act to protect citizens of this commonwealth from empiricism," approved April 10, 1893, and the amendment thereto approved March 18, 1898; that this act is in violation of the bill of rights, and is unconstitutional, or, if valid, that under it appellee is discriminating against the system of medicine known as "osteopathy," refusing to recognize his diploma, or to give him a certificate; that the school referred to at which he graduated is a reputable medical college chartered by the laws of Missouri, with a large body of learned professors, and a large patronage of pupils, and as such is entitled to be recognized and indorsed by the

appellee. He prayed that appellee be enjoined from molesting him in his business or profession as an osteopath, or pursuing him criminally therefor, and, if he was not entitled to this relief, then that a writ of mandamus be awarded him compelling appellee to recognize and indorse the American College of Osteopathy at Kirksville, Mo., and issue him a certificate entitling him to follow his calling in this state. Appellee answered, denying the allegations of the petition, and pleading specially that the school referred to was not a reputable medical college, and that plaintiff, as a graduate of it, was not entitled to a certificate from it. On final hearing the court below dismissed the action, refusing the complainant any relief, and the correctness of this judgment is the question to be determined on this appeal.

The proof shows that osteopathy is a new method of treating diseases, which is said to have originated with Dr. A. T. Still, of Kirksville, Mo., about the year 1871. He practiced it more or less from that time until about the year 1890, when he opened a school for the instruction of others. In 1892 he obtained an imperfect charter or his school under the laws of Missouri. This was perfected in 1894 by a charter in regular form, under which the school has since been operating. At the time the proof was taken in this case there were in attendance

at the school something over 500 scholars from twenty-nine states of the Union, and several from Canada. In connection with the school was an infirmary, at which from 300 to 500 patients were regularly treated. There were twelve or thirteen professors in the school. Of these four were regularly graduated physicians, besides Dr. Still, who was a surgeon in the army during the Civil War, and is said to have been a college graduate; but the proof as to this is not clear. Another of the professors is a fellow of the Royal Society of England, and still another was for many years the circuit judge of that district. The buildings of the school are shown to be commodious, and suitable for its purposes. While its equipment at first was meager, it has gradually increased from time to time until now it would seem in some respects to compare favorably with other colleges. The patients treated at the infirmary, as well as those treated by appellant, appear to have been satisfied with what they received, and many of them to have been materially benefited. There are four or five other colleges of osteopathy, which, with the one at Kirksville, form an association, and in five states of the Union osteopathy has been recognized by statute. The testimony of the witnesses, the character of the professors, and the evident sincerity of their statements leave no doubt in our

minds that the school at Kirksville is a reputable school of osteopathy; but whether it is a reputable school of medicine, within the meaning of our statute, or what are appellant's rights if it is not, are very different questions, depending upon the proper construction of the act itself. The purpose of the statute, as shown by its title, was to protect the people of this state from empiricism. Its material provisions are as follows (Kentucky Statutes, sections 2611-2618):

"Section 2611. It shall be the duty of the county clerk of each county to purchase a book of suitable size, to be known as the "Medical Register" of the county, and to set apart one full page for the registration of each physician.

"Section 2612. It shall be unlawful for any person to practice medicine in any of its branches, within the limits of this state, who has not exhibited and registered in the county clerk's office of the county in which he resides his authority for so practicing medicine as herein prescribed, together with his age, address, place of birth and the school or system of medicine to which he professes to belong.

"Section 2613. Authority to practice medicine shall be a certificate from the state board of health, and said board shall, upon application, issue a certificate to any reputable physician who is practicing, or who desires to begin the

practice of medicine in this state, who possesses any of the following qualifications:

"(1) A diploma from a reputable medical college legally chartered under the laws of this state. (2) A diploma from a reputable and legally chartered medical college of some other state or country, indorsed as such by the state board of health. (3) Satisfactory evidence from the person claiming the same that such person was reputably and honorably engaged in the practice of medicine in this state prior to February 23, 1864. (4) Satisfactory evidence from any person who was reputably and honorably engaged in the practice of medicine in this state prior to Februarv 23, 1884, who has passed a satisfactory practical examination before said board.

"Section 2616. Nothing in this law shall be so construed as to discriminate against any peculiar school system of medicine, or to prohibit women from practicing midwifery, or to prohibit gratuitous services in case of emergency; nor shall this law apply to commissioned surgeons of the United States army, navy, or marine hospital service, or to legally qualified physicians of another state called to see a particular case or family, but who does not open an office or appoint any place in this state where he or she may meet patients or receive calls.

"Section 2618. Any person living in this state or coming into this state, who shall practice medicine, or attempt to practice medicine in any of its branches, or who shall treat or attempt to treat any sick or afflicted person by any system or method whatsoever, for reward or compensation, without first complying with the provisions of this law, shall, upon conviction thereof, be fined fifty dollars, and upon each and every subsequent conviction shall be fined one hundred dollars and imprisoned thirty days, or either or both, in the discretion of the court or jury trying the case; and in no case where any provision of this law has been violated shall the person so violating be entitled to receive any compensation for the services rendered. To open an office for such purpose or to announce to the public in any way a readiness to treat the sick or afflicted shall be deemed to engage in the practice of medicine within the meaning of this act."

Empiricism is defined as "a practice of medicine founded on mere experience without the aid of science or the knowledge of principles." The above act is therefore "an act to protect the people of this commonwealth from the practice of medicine founded on mere experience, without the aid of science, or knowledge of principles." To secure this, it requires a medical register to be kept by the county clerk of each

county, and makes it unlawful for any person to practice medicine in any of its branches within the limits of the state until he has registered in the county of his residence. Authority to practice medicine under the statute can only be conferred by a certificate from the state board of health issued to a reputable physician having a diploma from a reputable medical college legally chartered under the laws of this state, or ,if chartered under the laws of some other state or country, indorsed as such by the state board of health. Persons engaged in the practice reputably and honorably prior to February 23, 1864, are, on proof of this fact, entitled to a certificate, and persons engaged in the practice reputably and honorably prior to February 23, 1884, may be given a certificate after a satisfactory examination before the board; but there is no authority in the act for the board to examine any one who was not engaged in the practice prior to February 23, 1884, or to issue a certificate to such a person, unless he is a reputable physician having a diploma from a reputable college; and without such a certificate it is made unlawful for any person to practice medicine in any of its branches within the limits of this state. The appellant, therefore, having graduated in the year 1897, and not being a practitioner of medicine in this state prior to February 23, 1884, could not be ex-

amined before the board of health, nor was he entitled to a certificate from it unless upon the ground that he held a diploma from a reputable and legally chartered medical college of the state of Missouri. It is contended for the appellee that the law has conferred upon it the sole power to determine whether a particular college is reputable, and should be indorsed as such by it. It is contended for appellant that appellee, by the express terms of the statute, is limited in power, and can not discriminate against any peculiar school or system of medicine. It is urged with force that, if the refusal to indorse the school is essentially based on the system it teaches, rather than on the sufficiency of its instructions, the action of the board is without authority, and may be restrained by the courts.

This seems to us to be the true construction of the statute, and in a case where it was clear from the evidence that a discrimination had been made against a system of medicine we should not hesitate to hold that the board had exceeded its power. But, under the evidence, we are not inclined to think that the school referred to is a reputable medical college, within the meaning of the statute. The terms "physician," "practice medicine," and "medical college," used in the act, have a well-defined popular meaning, and were used, we think, by the

legislature in this sense. The term "physician" refers to those exercising the calling of treating the sick by medical agencies, as commonly practiced throughout the state at the time the act was passed. The term "medical college" refers to those schools of learning teaching medicine in its different branches, at which physicians at that time were educated, or schools of that character organized since. At such an institution an essential part of the instruction was in teaching the nature and effects of medicines, how to compound and administer them, and for what maladies they were to be used. In such institutions also surgery is an essential part of the instruction. Without a knowledge of surgery or medical agencies, no person would be deemed equipped to practice medicine by any medical college; for these things lie at the base of the instruction given in such schools. Osteopathy teaches neither therapeutics, *materia medica,* nor surgery. Bacteriology is also ignored by it. As we understand the record, it relies entirely on manipulation of the body for the cure of diseases. Its theory is that a large number of ailments are due to irregular nerve action, and that by stimulating or repressing the nerve centers by manipulation they enable nature herself to right the evil. It administers no drugs; it uses no knife. It does not profess to cure all diseases. When a case is presented requiring

surgery or medication, the osteopath gives way to the physician. Faith cure or magnetism has no place in the system. It relies wholly upon manipulation aiding the *vis medicatrix maturae*. The main things taught in the school are physiology, anatomy, and the treatment of diseases by manipulation. The system is new, and, of necessity, imperfect as yet, but, if we may credit the evidence in this record, is often efficacious where the regular practice is ineffective. Still a school which teaches neither surgery, bacteriology, *materia medica,* nor therapeutics, can not be regarded as a medical college within the popular meaning of those terms as understood in this state when the act in question was passed.

Having reached the conclusion that the school at which appellant graduated is not a medical college within the meaning of the statute, it remains for us to inquire whether the act applies to him at all. The subject-matter in the minds of the legislature in passing the act was to protect the people of the state from the practice of medicine founded merely on experience without scientific knowledge. To effect this it allows only reputable physicians holding a diploma from a regular or reputable school to practice medicine, with an exception in favor of those then already long engaged in the practice. If the act applies to appellant, he can in no case

practice his system in this state; for, however well qualified he may be, he can not be examined for license as a physician, and he could not, without abandoning his practice as an osteopath, obtain a diploma from a medical college. If the statute applies to him, it also applies to trained nurses, and all others of that class, who, for compensation, administer to the wants of the sick. The result of such a construction of the statute would be to compel every one, whether willing or unwilling, to employ a registered physician to care for him when he is sick, or to trust himself entirely to gratuitous services, however much he might prefer skillful nursing to medical treatment. It is doubtful if the legislature has the right under the Constitution thus to restrict the free choice of the citizen in a matter concerning only himself and not the people at large. Taking the statute as a whole, we do not think that this was within the legislative intent, or that the act was designed to do more than regulate the practice of medicine by physicians and surgeons.

After it was first passed in this state there was a separate statute passed applicable to dentists, and still another for pharmacists: thus showing that the legislature intended the act before us to apply only to physicians. Until these acts were passed there were no requirements established by law for the practice of

medicine in this state, and in undertaking to regulate the practice of medicine it should not be presumed that the legislature intended to interfere with trained nurses or others who, for compensation, attended on the sick without undertaking to prescribe medicine or to follow the calling of a physician; for such persons are not within the spirit of the act, and could not well have been in the mind of the legislature when enacting it. A statute precisely similar to ours in purpose was passed in the state of New York. In Smith v. Lane, 24 Hun. 632, a person treating disease like appellant was charged with violating the act. The court held him not within the statute. Among other things the court said: "The practice of medicine is a pursuit very generally known and understood, and so, also, that of surgery. The former includes the application and use of medicines and drugs for the purpose of curing, mitigating or alleviating bodily diseases, while the functions of the latter are limited to manual operations, usually performed by surgical instruments or appliances. It was entirely proper for the legislature, by means of this chapter, to prescribe the qualification of the persons who might be intrusted with the performance of these very important duties. The health and safety of society could be maintained and protected in no other manner. To allow incompetent or unqualified persons to

administer or apply medical agents, or to perform surgical operations, would be highly dangerous to the health as well as the lives of the persons who might be operated upon, and there is reason to believe that lasting and serious injuries, as well as the loss of life, have been produced by the improper use of medical agents and surgical instruments or appliances. It was the purpose and object of the legislature by this act to prevent a continuance of deleterious practice of this nature, and to confine the use of medicines and the operations of surgery to a class of persons who, upon examination, should be found competent and qualified to follow these professional pursuits. No such danger could possibly arise from the treatment to which the plaintiff's occupation was confined.

While it might be no benefit, it could hardly be possible that it could result in harm or injury. * * * His system of practice was rather that of nursing than of either medicine or surgery. * * * He neither gave nor applied drugs or medicines, nor used surgical instruments. He was outside of the limits of both professions, and neither of the schools or societies mentioned in the act had jurisdiction over him." A statute very similar to ours was passed in the state of Ohio, and in State v. Liffring, 55 N. E. 168 (46 L. R. A. 334), the question was presented to the Supreme Court

of the state whether an osteopath was included in the statute. It was held that he was not. The court said: "The obvious purpose of the act under consideration is to secure to those who believe in the efficacy of medicines the ministration of educated men, thus preventing fraud and imposition, and to protect society from the evils which result from the administration of potent drugs by the ignorant and unskillful. The purpose of the act is accurately indicated by its title to be "to regulate the practice of medicine." No provision of the act indicates an intention on the part of the legislature that those who do not propose to practice medicine shall graduate from a college of medicine, or otherwise become learned in its use. Without such knowledge no one is entitled to a certificate from the board of examination.

The result of the view urged in support of the exception is that by this act the General Assembly has attempted to determine a question of science, and control the personal conduct of the citizen without regard to his opinion; and this is a matter in which the public is in no wise concerned. Such legislation would be an astonishing denial of the commonly accepted views touching the right to personal opinion and conduct, which does not invade the right of others." A similar ruling was made in Rhode Island. State v. Mylod, 40 Atl. 753. While

the phraseology of our statute is in some respects different from that before the court in either of these cases, the purpose of the act is plainly the same, and we think the same construction should be adopted. The thing in the mind of the legislature, and declared by the act to be unlawful, is "for any person to practice medicine in any of its branches within the limits of this state" without a certificate from the state board of health. Section 2612.

And as the board is only authorized to issue a certificate to a reputable physician having a diploma from a reputable medical college, and no discrimination is allowed against any peculiar school or system of medicine, the penalties provided by the last section of the act must be limited to that which is referred to in the title and previous sections,—the practice of medicine in some of its branches in this state; and the words, "who shall practice medicine or attempt to practice medicine in any of its branches or who shall treat or attempt to treat any sick or afflicted person by any system or method whatsoever, for reward or compensation, without first complying with the provisions of this law," must be held to refer to physicians or surgeons belonging to some school or system of medicine practicing or desiring to practice medicine in the state, as provided in the preceding section; otherwise, this section

would be made to include those not provided for in the preceding section, and the effect of the act would be not to protect the people of this state from the unscientific practice of medicine, but to deny to the sick all ministrations not gratuitous, unless by registered physicians. Thus construed, the act would be for the protection rather of the doctors of the state than of the people; and, in view of the general custom before and since this act of hiring nurses and others to care for the sick, we are of the opinion that such a construction would do violence to the actual intention of the legislature. Appellant is in no proper sense a physician or surgeon. He does not practice medicine. He is rather on the plane of a trained nurse. If by kneading and manipulating the body of the patient he can give relief from suffering, we see no reason why he should not be paid for his labor as other laborers. Services in kneading and manipulating the body are no more the practice of medicine than services in bathing a patient to allay his fever or the inflammation of a wound. Appellant may not prescribe or administer medicine or perform surgery, but, so long as he confines himself to osteopathy, kneading and manipulating the body, without the use of medicine or surgical appliances, he violates no law, and appellee should not molest him. On the return of the case the court below

will enter judgment granting appellant a perpetual injunction restraining appellee from interfering with him or prosecuting him for the practice of osteopathy as above indicated. Judgment reversed, and cause remanded for further proceedings not inconsistent with this opinion.

Within the last decade many new methods or arts of drugless healing and curing diseases have sprung into existence, principal among them is perhaps that generally known as Christian Science, a well defined system of drugless healing, upon which there are standard text books defining the system the most potent elements of which are silent prayer and mental suggestion. The rapid growth of Christian Science, numbering its adherents by the millions in this country, gives some evidence of the popularity of that particular school of drugless healing, and, it is safe to add, some intimation of the efficacy of the systems practiced, and it is estimated that there are eleven thousand Christian Science drugless practitioners alone in the state of California.

Next in importance is that school generally known as osteopathy, consisting of a system of rubbing and kneading the body, manipulating the spine, applying hot and cold baths and prescribing diet and exercise for the treatment,

relief and cure of bodily infirmities or diseases without the use of medicine, drugs or surgery.

Next in importance is that system of drugless healing known as the faith cure, involving the exercise of faith, hope, mental suggestion and mental adaptation for the relief and cure of bodily infirmities or diseases without the use of medicine, drugs or surgery. This particular school of drugless practice numbers its followers among the tens of thousands in the state of California.

The other recognized ancient schools of drugless practice are magnetic healing, divine healing and clairvoyant healing. Since these various methods of drugless treatment of diseases or infirmities have gained prominence and strong following, its practice is being universally recognized as a great menace to the regular practitioners of the old school of medicine, supplanting in a large measure the use of drugs, medicines and the knife, and strong efforts have been made to put a stop to it by arresting the practitioner and charging him with practicing medicine without a license, in violation of the statutes requiring physicians and surgeons to procure a license before entering upon the practice of their profession. When such arrests have been made the questions which the courts most generally have been called upon to solve is, first, whether one who practices drugless

healing is engaged in the practice of medicine and surgery within the meaning of such statutes. Second, whether such drugless healing or practice involving mental and spiritual process in the treatment of diseases, without the use of medicine or surgery is in itself innocent and an inoffensive and harmless occupation, and therefore not subject to police regulation. Third, whether the regulation is reasonable.

Upon these questions the great weight of authority under the decisions of the courts of last resort of the various states of the Union at the present time hold in favor of the drugless practice of diseases, especially where the elements of spiritual and mental processes are alone employed in the treatment of diseases as not being subject to police regulation.

However, the Supreme Courts of Ohio, Nebraska, Colorado and Illinois, in interpreting legislative enactments similar to the California medical law, have held that healing by prayer or the practice of Christian Science or any other method of drugless healing was subject to the police regulation, and that its practice without a certificate from the board of medical examiners was in violation of the law.

Thus it has been uniformly held in these states that a statute regulating the practice of medicine and providing that any person shall be regarded as practicing medicine who shall

treat, operate on or prescribe for any physical ailment of another, is constitutional, and that one who practices osteopathy, Christian Science, faith cure, magnetic healing or clairvoyant healing are required to take out a license and to undergo an examination in the various branches of scientific knowledge prescribed by the act, holding that to treat a person for a physical or mental ailment by prayer or by rubbing the affected parts with the hands, is a treatment or operation for a physical ailment and is practicing medicine within the meaning of the act to regulate the practice of medicine.

The medical law of the state of California was largely copied from the medical law now in force in the state of Ohio, and in the interpretation of that law by Judge Summers, of the Supreme Court of the state of Ohio, in the case of State v. Marble, 73 N. E., page 1063, it was held as follows: "The right to practice medicine has been so long and so universally subject to state regulation that it might almost be said to be not an absolute right but a privilege or franchise. Assuming, however, that it is an absolute right, it is conceded that it is subject to such reasonable regulations or conditions as the state in the exercise of the police power may prescribe. France v. The State, 57 Ohio St. 1, 47 N. E. 1041; The State of Ohio v. Gardner,

58 Ohio St. 599, 51 N. E. 136, 41 L. R. A. 689, 65 Am. St. Rep. 785.

The contention of counsel for the defendant is, first, that prescribing, for a fee, Christian Science treatment for the cure of a bodily ailment, is not practicing medicine within the meaning of the statute; second, that Christian Science is a religious belief, and that defendant, in giving the treatment, did so in obedience to a religious and conscientious duty, or, in other words, was worshiping God according to the dictates of his conscience, and that a statute interfering therewith is unconstitutional, as depriving him of his natural and indefeasible right to worship Almighty God according to the dictates of his own conscience; third, that if Christian Science is a school of medicine, the act discriminates against Christian Science, in that it has made provision for the examination of the practitioners of other schools of medicine that are related to other theories of medicine, but that it has made no such provision for the Christian Science practitioner, but, on the contrary, requires him to take the same examination that is prescribed for the so-called regular physician.

It is not necessary to notice the various statutes regulating the practice of medicine that have been passed in this state. The first was passed in 1811, and numerous acts have since

been passed, down to the Act of 1902 involved in the present controversy. Reference is made to them in the briefs of counsel in State of Ohio v. Gravett, 65 Ohio St. 289, 62 N. E. 325, 55 L. R. A. 791, 87 Am. St. Rep. 605. It is sufficient for present purposes to say that in 1896 was passed an act, entitled "An act to regulate the practice of medicine in the state of Ohio," which was quite comprehensive. It provided a state board of medical registration and examination, and that no person should practice medicine, surgery, or midwifery, in any of its branches, in this state, without first complying with the requirements of the act. Its requirements were to the effect that a person engaged in the practice must obtain a certificate from the board, upon a showing either that he was a graduate in medicine or surgery, or a legal practitioner under the laws then in force, or upon such examination before the board as to his qualifications as the board might require, and, as to a person practicing midwifery, that she should obtain a certificate from the probate judge of the county in which she resides. So much of the section defining who shall be regarded as a practitioner of medicine and surgery, within the meaning of the act, as is necessary to an understanding of the question determined, is here set out, and as subsequently

amended, the changes being indicated by the words in italics:

"Any person shall be regarded as practicing medicine or surgery within the meaning of this act who shall append the letters M. D. or M. B. to his name, or, for a fee, prescribe, direct or recommend for the use of any person, any drug or medicine or other agency for the treatment, cure or relief of any wound, fracture or bodily injury, infirmity or disease; provided, however, that nothing in this act shall be construed to prohibit service in case of emergency, or the domestic administration of family remedies." February 27, 1896, 92 Ohio Laws, p. 47.

"Sec. 4403f. Any person shall be regarded as practicing medicine or surgery or midwifery within the meaning of this act, who shall use the words or letters 'Dr.,' 'Doctor,' 'Professor,' 'M. D.,' 'M. B.,' or any other title, in connection with his name, which in any way represents him as engaged in the practice of medicine or surgery or midwifery, in any of its branches, or who shall prescribe, or who shall recommend, for a fee, for like use any drug or medicine, appliance, application, operation or treatment, of whatever nature, for the cure or relief of any wound, fracture or bodily injury, infirmity or disease. The use of any of the above mentioned words or letters, or titles in

such connection, and under such circumstances as to induce the belief that the person who uses them is engaged in the practice of medicine or surgery or midwifery in any of its branches, shall be deemed and accepted as *prima facie* proof of an intent on the part of such person to represent himself as engaged in the practice of medicine or surgery or midwifery, provided, however, that nothing in this act shall be construed to prohibit service in the case of emergency, or the domestic administration of family remedies." April 14, 1900, 94 Ohio Laws, 200.

The section as amended April 21, 1902 (95 Ohio Laws, 212), is not changed in the particular part under consideration.

In State of Ohio v. Liffring, 61 Ohio St. 39, 55 N. E. 168, 46 L. R. A. 334, 76 Am. St. Rep. 358, it was held that osteopathy was not an "agency" within the meaning of the Act of 1896, and in State of Ohio v. Gravett, *supra*, it was held that it was within the meaning of the statute as amended in 1900. In the opinion in the latter case, Shauck, J., referring to the former case, says (pages 306, 307 of 65 Ohio St., page 325 of 62 N. E., 55 L. R. A. 791, 87 Am. St. Rep. 605): "The view then urged by the attorney general was that the system of rubbing or kneading the body known as 'osteopathy' is an 'agency' within the meaning of

the statute; but the interpretation of the statute seemed to invoke the maxim *noscitur a sociis* as an aid in determining the meaning of the work, and our conclusion was that it meant something of like character with a drug or medicine, to be administered with a view to producing effects by virtue of its own potency, and that it therefore did not include osteopathy. * * * It seems quite clear that in its present form the statute affords no proper occasion for the application of the maxim of interpretation by which we were aided in State v. Liffring, *supra*. Careful comparison of the two acts with respect to their definitions of the practice regulated shows that, while in the former the legislature intended to prohibit the administration of drugs by persons not informed as to their effect or potency, by the latter it has attempted a comprehensive regulation of the practice of the healing art, so far, at least, as to require the preparatory education of those who, for compensation, practice it according to any of its theories. The comprehensive language of the statute, and the purpose which it clearly indicates, require the conclusion that osteopathy is within the practice now regulated." The conceded facts are that the defendant did not recommend or prescribe for the cure or relief of Christ Hehl any drug, medicine, appliance, application, or operation, but, on the contrary,

that he made no diagnosis or any physical examination, gave him no directions as to food, diet, exercise or any other directions, nor did he make any inquiry as to the nature of the disease with which he was afflicted. The only thing he did was to offer prayer for his recovery. He was called to see Hehl for rheumatism, but called on him but once, and after that gave him what is, among the followers of Christian Science, known as "absent treatment," for one week, and at the end of that time Hehl paid him $5 for his services. The defendant did not have a certificate from the state board of medical registration and examination, as required by the statute. It is contended that the word "treatment" is to be given its meaning as used in the practice of medicine, and that, as so read, it means the application of remedies to the curing of disease; that a remedy is a medicine, or application or process; that process is an action or operation; and that prayer for the recovery of the sick is neither. Technically this may be correct, but the science of medicine has made some advance since the time Macbeth wished to throw physic to the dogs because his doctor could not cure a mind diseased, but told him, "Therein the patient must minister to himself." Nowadays doctors cure imaginary diseases by means that would as easily as Christian Science escape the above definition. What

Christian Science is we do not know. The practice of it is referred to as "treatment" by its followers. Mrs. Mary Baker G. Eddy, in "Science and Health," page 410, says: "Always begin your treatment by allaying the fear of patients. Silently reassure the patient as to his exemption from disease and danger. Watch the result of this simple rule of Christian Science, and you will find that it alleviates the symptoms of every disease. If you succeed in wholly removing the fear your patient is healed. The great fact that God wisely governs all, never punishing aught but sin, is your standpoint whence to advance and destroy the human fear of sickness. Plead the case in science and for truth, mentally and silently. You may vary the arguments, to meet the peculiar or general symptoms of the case you treat; but be thoroughly persuaded in your own mind, and you will finally be the winner. You may call the disease by name when you address it mentally; but by naming it audibly, you are liable to impress it upon the thought. The silence of Christian Science and love is eloquent. It is powerful to unclasp the hold of disease, and reduce its cause to nothingness. To prevent disease or to cure it mentally, let spirit destroy this dream of sense. If you wish to heal by argument, find the type of the ailment, get its name, and array your mental plea against the physical.

Argue with the patient (mentally, not audibly) that he has no disease, and conform the argument to the evidence. Mentally insist that health is the everlasting fact and sickness the temporal falsity. Then realize the presence of health, and the corporeal senses will respond. 'So be it!'" If its followers call it treatment, they ought not to be heard to say it is not. Dr. O. W. Holmes, Med. Ess., says: "Disease is to be treated by anything that is proved to cure it." The statute of 1896, as we have seen, had been held by this court not to comprise the practice of osteopathy, and, by a lower court (Evans v. The State, 9 Ohio Dec. 222, 6 Ohio N. P. 129), not to apply to Christian Science. So that the use of the words "of whatever nature" in the amendment are quite significant, and we have no doubt the legislative intent was to bring within this definition every person who, for a fee, prescribes or recommends a cure for disease, even though the cure is to come not from himself, but, through his intercedence, from God. In Illinois the legislature, when it enacted, "Any person shall be regarded as practicing medicine, within the meaning of this act, who shall treat or profess to treat, operate on or prescribe for any physical ailment or any physical injury or deformity of another," thought it necessary to exclude Christian Science by providing that nothing in this sec-

tion shall be construed to apply to any person who administers to or treats the sick or suffering by mental or spiritual means, without the use of any drug or material remedy.

The next contention is that the statute interferes with defendant's right to worship God according to the dictates of his conscience. No specific provision of the Constitution is referred to. Section 7 of our Bill of Rights provides: "All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience, * * * nor shall any interference with the rights of conscience be permitted." It is to be observed that the statute does not prohibit the prescribing or recommending the treatment except for a fee, and we are not advised that it is a part of defendant's religion to exact a fee as well as to pray. But if the inhibition of the statute tends to the public welfare, and is not obnoxious on other grounds, it is not within this provision of the Bill of Rights. In Bloom v. Richards, 2 Ohio St. 387, 392, Thurman, J., says: "Acts evil in their nature or dangerous to the public welfare may be forbidden and punished, though sanctioned by one religion and prohibited by another; but this creates no preference whatever, for they would be equally forbidden and punished if all religions permitted them. Thus, no plea of his religion should shield a murderer,

ravisher, or bigamist; for the community would be at the mercy of superstition if such crimes as these could be committed with impunity because sanctioned by some religious delusion." In Reynolds v. United States, 98 U. S. 145, 164, 25 L. Ed. 244, after showing historically how religious freedom came to be guaranteed by amendment to the Constitution of the United States, Chief Justice Waite considers what is meant by religious freedom, and concludes: "Congress was deprived of all legislative power over mere opinion, but was left free to reach actions which were in violation of social duties or subversive of good order."

This brings us to the question whether the act, in so far as its application to Christian Science is concerned, is a valid exercise of the police power. The term (police power), it has been said, is incapable of exact definition. "It aims directly to secure and promote the public welfare, and it does so by restraint and compulsion." Section 3, "Police Power," Freund. In Parks v. State, 159 Ind. 211, 220, 64 N. E. 862, 866, 59 L. R. A. 190, Gillet, L., gives the following list of subjects that have been dealt with under this power: "Under this power various burdens are imposed: Criminals are deprived of their liberty; the implements of crime are destroyed; vice and pauperism are controlled; noxious trades are regulated; nuisances

are suppressed; children are required to attend school; the property of infants and persons *non compos* is placed in the control of others; the construction of buildings in populous neighborhoods is regulated; provision is made for the greater safety of passengers upon railways and steamboats; employers are required to provide safe places in which the work of their employes is to be performed; the hours of work, in employments deleterious to the health, limited; the employment of children in factories prohibited; pure food laws are enacted; physicians, dentists and druggists are licensed; and so the list might be almost indefinitely extended by specific instances of authorized legislative regulations enforcing the social compact for the protection of life, health, morals, property and the general weal of the community, until we perceive that definition is impossible, and that the whole matter of the legislative sovereignty, as opposed to individual liberty, must, in the absence of other constitutional restriction, be left, as the federal Supreme Court has declared, to the gradual processes of judicial inclusion and exclusion, as the cases presented for decision require." The earlier decisions were to the effect that the only question for judicial consideration was whether a condition for legislation existed; if it did, the matter was entirely within the discretion of the legislature. A resort to the polls

was the only road to relief from abuse or mistake. Munn v. Illinois, 94 U. S. 113, 24 L. Ed. 77. But the later cases are that the power is subject to express state constitutional limitations, and to the inhibition of the Fourteenth Amendment to the Constitution of the United States against any state to deprive any person of life, liberty or property without due process of law, and to deny to any person within its jurisdiction the equal protection of the laws, and to the implied limitation that every exercise of the power must be reasonable. Police Powers, Freund, section 63; Rideout v. Knox, 148 Mass. 368, 19 N. E. 390, 2 L. R. A. 81, 12 Am. St. Rep. 560; Lawton v. Steele, 152 U. S. 133, 14 Sup. Ct. 499, 38 L. Ed. 385; Plessy v. Ferguson, 163 U. S. 537, 16 Sup. Ct. 1138, 51 L. Ed. 256; Wisconsin M. & P. R. R. Co. v. Jacobson, 179 U. S. 287, 21 Sup. Ct. 115, 45 L. Ed. 194, and Dobbins v. Los Angeles, 195 U. S. 223, 25 Sup. Ct. 18, 49 L. Ed. That the practice of medicine may be regulated by legislation has been decided in every court in which the question has arisen. In the leading case, Dent v. West Virginia, 129 U. S. 114, 122, 9 Sup. Ct. 231, 233, 32 L. Ed. 623, Mr. Justice Field says: "The power of the state to provide for the general welfare of its people authorizes it to prescribe all such regulations as in its judgment will secure, or tend to secure, them against the

consequences of ignorance and incapacity, as well as of deception and fraud. As one means to this end it has been the practice of different states from time immemorial to exact in many pursuits a certain degree of skill and learning upon which the community may confidently rely, their possession being generally ascertained upon an examination of parties by competent persons, or inferred upon a certificate to them in the form of a diploma or license from an institution established for instruction on the subjects, scientific and otherwise, with which such pursuits have to deal. The nature and extent of the qualifications required must depend primarily upon the judgment of the state as to their necessity. If they are appropriate to the calling or profession, and attainable by reasonable study or application, no objection to their validity can be raised because of their stringency or difficulty. It is only when they have no relation to such calling or profession, or are unattainable by such reasonable study and application, that they can operate to deprive one of his right to pursue a lawful vocation. Few professions require more careful preparation by one who seeks to enter it than that of medicine. It has to deal with all those subtle and mysterious influences upon which health and life depend, and requires not only a knowledge of the properties of vegetable and

mineral substances, but of the human body in all its complicated parts, and their relation to each other, as well as their influence upon the mind. The physician must be able to detect readily the presence of disease, and prescribe appropriate remedies for its removal. Every one may have occasion to consult him, but comparatively few can judge of the qualifications of learning and skill which he possesses. Reliance must be placed upon the assurance given by his license, issued by an authority competent to judge in that respect, that he possesses the requisite qualifications. Due consideration, therefore, for the protection of society may well induce the state to exclude from practice those who have not such a license, or who are found upon examination not to be fully qualified." And again: "We perceive nothing in the statute which indicates an intention of the legislature to deprive one of any of his rights. No one has a right to practice medicine without having the necessary qualifications of learning and skill; and the statute only requires that whoever assumes, by offering to the community his services as a physician, that he possesses such learning and skill, shall present evidence of it by a certificate or license from a body designated by the state as competent to judge of his qualifications."

But it is said the offering of prayer to God for the recovery of the sick or the curing by faith and mental suggestion in no sense affects public safety or public welfare. Admitted. But is that a correct statement of the case? If the defendant prayed for the recovery of Hehl, that was the treatment he gave him for the cure of his rheumatism, and for which Hehl paid him. He was practicing healing or curing disease. To assume that legislation may be directed only against the administering of drugs or the use of the knife is to take a too narrow view. The subject of the legislation is not medicine and surgery; it is the public health, or the practice of healing. The state might make it an offense, as has been done in New York (People v. Pierson, 176 N. Y. 201, 68 N. E. 243, 63 L. R. A. 187, 98 Am. St. Rep. 666), for any one to omit to furnish medical attendance to those dependent upon him, and at the same time leave him at liberty to die in any manner he may choose. But this is not all. While the state may not deem it wise to go to the extent of requiring the individual to avail himself of the services of a physician, yet it may not wish to hasten his death, and so to transfer to itself the burden of supporting those dependent upon him, by making it possible for him to employ an empiric. Again, where there is an infectious or

contagious disease, the public welfare may be vitally affected by a failure promptly to recognize it, and so the state is interested in permitting to practice the art of healing only those possessing recognized qualifications. So that, regarding disease, rather than the treatment of it, as the subject of the legislation, it is not necessary that the statute be preventative of particular practices, but it may make the right to undertake the treatment of disease dependent upon the possession of reasonable qualifications.

It is next contended: "That Christian Science is a recognized system or school of healing, and that the statute is unconstitutional, on the ground that it discriminates against Christian Science, or in favor of certain schools of medicine—that different requirements are made of those who use drugs or medicines, of surgeons, and of osteopaths, who use no medicines or drugs, but that the Christian Scientist who uses nothing must take the same examination as the regular practitioner; in other words, must understand the use of drugs and medicines, none of which, according to his system, does he ever use. That under the statute the osteopath is given a certificate to practice the healing art according to his system of treatment, without passing an examination before the state board in the subjects of pathology, chemistry and therapeutics, the principles and practice of med-

icine and surgery. That Christian Science entirely excluded drugs and all material methods of treatment, and relies solely upon prayer as a means for the relief or cure of the sick. Upon what possible theory of justice and equality can the Christian Scientist be required to pass an examination in a half dozen different subjects, which are not required of the osteopath, when these subjects have no relation to the practice of Christian Science, and are even further removed from that method of the healing art than they are from the practice of osteopathy? Neither the law nor the rules of the board of medical registration and examination contain any provisions for ascertaining the attainments of the Christian Scientist who might apply for a certificate to practice his system of healing. The record shows that there is no member of the board qualified to examine a Christian Scientist, and no committee or other means for examination has been provided." If we are correct in the conclusion that disease, and not the method of its treatment, is the subject of the legislation, then it is putting the cart before the horse to say that every school of healing must be recognized. That the legislature in its wisdom might prescribe a uniform examination we do not doubt, and that it may recognize one school, without recognizing all, is also true, if the recognition be in the exercise of proper

classification and for the public welfare, and not with the view to create a monopoly in the schools recognized, or a discrimination against other schools. Parks v. The State, 159 Ind. 211, 64 N. E. 862, 59 L. R. A. 190; The State *ex rel.* Kellog v. Currens *et al.*, 111 Wis. 431, 87 N. W. 561, 56 L. R. A. 252; Scholle v. State, 90 Md. 729, 46 Atl. 326, 50 L. R. A. 411. The act under consideration in State of Ohio v. Gravett, *supra,* was held void as discriminating against osteopaths, because, in order to obtain a certificate to practice, limited so that they might not prescribe drugs or perform surgery, they were required a longer period of study than was required of those for unlimited certificates. The present act, or sections 4403c (94 Ohio Laws, 198) and 4403f (95 Ohio Laws, 212), make no such discrimination. It provides that no person shall practice medicine and surgery or midwifery without first complying with the requirements of the act. Then it exempts persons entitled to practice at the time the act is to take effect, prescribes what evidence of general learning the applicant shall present as a condition to his being admitted to the examination, and then provides that each applicant shall be examined in certain specified subjects, and that he shall be examined in the *materia medica,* and therapeutics and the principles and practice of medicine, of the school

of medicine in which he desires to practice, by the member or members of the board representing such school, and, if he passes an examination satisfactory to the board, it shall, upon payment of the prescribed fee, issue to him a certificate, which, when left with the probate judge for record, shall be conclusive evidence that its holder is entitled to practice medicine or surgery in this state. It further provides: "That nothing in this act shall be construed to prohibit services in a case of emergency and the domestic administration of family remedies; and this act shall not apply to any commissioned medical officer of the United States army, navy or marine hospital service, in the discharge of his professional duties, nor to any legally qualified dentist when engaged exclusively in the practice of dentistry," nor to any physician or surgeon who is a legal practitioner in another state, nor to any osteopath who shall pass an examination in certain subjects, and then provides for the appointment of a committee to examine applicants to practice osteopathy, and prescribes the qualifications for admission. We fail to find anything in the act that discriminates against Christian Science. It does not provide for a special examination and limited certificate for the Christian Science practitioner, but he may obtain a certificate to practice medicine upon the same conditions as any other per-

son, and there is nothing in the act requiring him to use the knowledge after he acquires it.

In response to an inquiry from the bench as to what, respecting the theory of medicine, a Christian Scientist could be examined, counsel suggested that he might be examined as to his ability to pray. But silent treatment is recommended as likely to be more efficacious. To admit that a practitioner may determine what treatment he will give for the cure of disease, and that the state may examine him only respecting such treatment, would be to defeat the purpose of the statute and to make effective legislation of this character impossible. If the recent statute is too comprehensive, the remedy is with the legislature.

The conclusion reached is supported by State of Nebraska v. Buswell, 40 Neb. 158, 58 N. W. 728, 24 L. R. A. 68, and the following recent decisions throw more or less light upon such legislation: The People v. Blue Mountain Joe, 129 Ill. 370, 21 N. E. 923; Williams v. The People, 121 Ill. 84, 11 N. E. 881; The People v. Gordon, 194 Ill. 560, 62 N. E. 858, 88 Am. St. Rep. 165; Bragg v. The State, 134 Ala. 165, 32 South. 767, 5 L. R. A. 925; The State of Iowa v. Bair, 112 Iowa 466, 84 N. W. 532, 51 L. R. A. 776; The State of Kansas v. Wilcox, 64 Kan. 789, 68 Pac. 634; Meffert v. Med-

ical Board, 66 Kan. 711, 72 Pac. 247; State of Maine v. Bohemier, 96 Me. 257, 52 Atl. 643; People v. Reetz, 127 Mich. 87, 86 N. W. 396; State v. Biggs, 133 N. C. 729, 46 S. E. 401, 64 L. R. A. 139, 98 Am. St. Rep. 731, monographic note; State v. Heath (Iowa), 101 N. W. 429.

The exceptions are sustained."

To be a valid police regulation it must be reasonable, necessary and adapted to the use for which it was enacted.

Mungler v. Kansas, 123 U. S. 623;
Minnesota v. Barber, 136 U. S. 313;
In re Jacobs, 98th N. Y. 98;
Jamison v. Indiana Natl. Gas & Oil Company, 128 Ind. 583;
State v. Gerhardt, 145 Ind. 439;
Ritchie v. People, 155 Ill. 98;
Chenoweth v. State Board of Medical Examiner, 141 Pac. 132.

Is the police regulation reasonable which requires the drugless practitioner who employs only faith, hope, mental suggestion and mental adaptation in his practice to be able to pass a satisfactory examination on anatomy, histology, elementary chemistry, toxicology, physiology, elementary bacteriology, hygiene, pathology, diagnosis, gnecology, obstetrics, manipulative and mechanical therapy.

Before an act can be considered a valid police regulation there must be some apparent danger to the public, and the remedy must be the means of eradicating the evil or avoiding the danger.

Lesch v. Koehler, 144 Ind. 278.

An apparent danger is one which may be seen or comprehended by the senses.

Carrol v. Natl. Accident Society, 139 Ia. 36, 130 Amer. St. Reports 294.

"Apparent" means clear or manifest to the understanding, plain, evident, obvious, known, palpable and indubitable.

M. K. & T. Ry. v. Reynolds, 115 S. W. 340.

Hence it has been held the police power of the state extends only to such measures as are reasonable, and the general rule is that all police regulations must be reasonable under all circumstances, in every case it must appear that the regulations adopted are reasonably necessary and appropriate for the accomplishment of a legitimate object. A statute to be within this power must be reasonable in its equal operation upon the persons whom it affects and not unduly oppressive. The validity of a police regulation, therefore, primarily depends on whether, under all the existing circumstances, the regulation is reasonable or arbitrary and whether it is really

designed to accomplish the purpose properly coming within the scope of the police power. In order to sustain the legislative interference by virtue of the police power, under a statute of a state, it is necessary that the act should have some reasonable relation to the subjects included in such power, and the law must tend in a degree that is perceptible and clear toward the preservation of the public welfare, or toward the prevention of some offense or manifest evil, or to the furtherance of some object within the scope of police power. The mere assertion by the legislature that a statute relates to the public health, safety or welfare does not in itself bring that statute within the police power of a state, for there must be obvious and real connection between the actual provisions of a police regulation and its avowed purpose, and the regulation adopted must be reasonably adapted to accomplish the end sought to be attained. A constitutional right cannot be abridged by the legislature under the guise of police regulation, since the legislature has no power under the guise of a police regulation to invade arbitrarily the personal rights and personal liberty of the individual citizen or arbitrarily to interfere with his business or profession, or to impose unusual and unnecessary restrictions on lawful occupations or to invade property rights.

What apparent danger to the health, morals and welfare of the public could have existed that made it reasonable and necessary for the legislature of the state of California to invoke the police powers of the state to deny the drugless practitioner the right to administer to his patient such relief and comfort as he could by the exercise of his spiritual and mental forces, to-wit, faith, hope, mental suggestion and mental adaptation?

If the drugless practitioner who employs prayer in his method was inoffensive and not a menace to the public health, morals and welfare of the community, and was therefore relieved from the operation of the law, why was it necessary to invoke the police power of the state against the drugless practitioner who employed faith and hope in administering to his patients and to require of him the full performance of the drastic regulations provided by the statute. Through what superior discriminating vision was the legislature enabled to distinguish between healing by prayer and healing by faith, and to make the law unequal in its enforcement, against this plaintiff and all other schools of drugless healing which is in contravention of the rights of the plaintiff herein under the Fourteenth Amendment of the federal Constitution and therefore unconstitutional and void.

Police regulations cannot arbitrarily interfere with the enjoyment of the rights of property or the personal rights guaranteed by the Fourteenth Amendment of the federal Constitution, and where a business or profession in itself is harmless and legitimate, the power of the state to regulate it is not the equivalent of the power to destroy. All statutory restrictions are imposed upon the theory that they are necessary for the safety, health or comfort of the public, accordingly, if a restriction or regulation is without reason or necessity it cannot be enforced. Police regulation which impairs or destroys rather than preserves and promotes is within the condemnation of constitutional guarantee. It has been said that the scope of the term "reasonable" as regards any regulation must be measured, having regard to the fundamental principles of human liberty as understood at the time of the formation of the Constitution, adapting the same to modern conditions and the measure of the reasonableness of a police regulation is not necessarily what is best but what is appropriate to the purpose under all the circumstances, and whether or not it is in fact a *bona fide* exercise of the reasonable discretion of the legislative department of the government and is not intended to affect some private or questionable purpose. It is also said that in proportion to the severity or extent

of the police regulation must a strict observance of the constitutional limitations upon the police power be required, and if a statute invades the rights secured by the fundamental law, it is the duty of the courts to so adjudge and thereby give effect to the Constitution.

The concession is freely made that the legislature had the right to lawfully classify the subject of its laws and make provisions applicable to one class of subjects that have no application to another class, but such classification can not be made arbitrarily without just or sound reason for the difference in the burdens imposed and the privileges conferred.

In the face of the constitutional prohibition of unequal laws there are three indispensable conditions to a constitutional imposition of liabilities or burdens upon, or a constitutional grant of rights or privileges to the members of one class that other members of the state do not bear or enjoy.

1st. There must be such a difference between the situation and circumstances of all the members of the class, and the situation and circumstances of other members of the state in relation to the subjects of the discriminatory legislation as presents a just and natural reason of necessity or propriety for the difference made by the law in their liabilities and rights. While reasonable classification is permitted without

doing violence to the equal protection of the laws, such classification must be based upon some real and substantial distinction bearing a reasonable and just relation to the things in respect to which such classification is imposed; and classification cannot be arbitrarily made without any substantial basis Arbitrary selection, it has been said, cannot be justified by calling it classification.

2nd. No person who does not belong to the class may be included therein, and all persons within the influence of the legislation relative to the class must be treated alike thereby.

3rd. All who are in a situation and circumstances relative to the subject of the discriminatory legislation indistinguishable from the situation and circumstances of the members of the class must be brought under the influence of the legislation and treated by it in the same way as are the members of the class.

An act of class legislation to stand in the face of the Constitution must be based upon some real and substantial distinction bearing a reasonable and just relation to the things in respect to which such classification is imposed.

In applying these three rules to the law complained of is the act of the legislature which relieves the Christian Science drugless practitioner and all others who employ the religious ceremony of prayer in the drugless treatment of

disease from the operation of the law and which prohibits the employment of every other religious rite, form or ceremony in the drugless treatment of diseases a legal classification based upon a just and natural reason of necessity or propriety.

The Supreme Court of the state of California, in holding the law in question constitutional, in the opinion rendered by that court in the case of The People of the State of California v. George W. Jordan, uses the following language:

> "The objection that those who profess to treat bodily afflictions by prayer are not required to be proficient in diagnosis, and the bare exemption under the law is the extension of a favor to them which is withheld from others, is met by the obvious answer that diagnosis is no part of such treatment. Those who believe that divine power may be invoked by prayer for the healing of the body believe also that God is all powerful. Patients receiving their ministration know this, and therefore no fraud or injury may be practiced upon such persons by reason of any lack of skill by the healers in determining the nature of the disease to be treated."

Healing by prayer and mental suggestion as practiced by the Christian Science healer is the employment of religious rites and ceremonies in the drugless treatment of disease and is in the same class with the drugless practitioner

who employs the religious rites and ceremonies of faith, hope and mental suggestion in the treatment of disease, and if the legislature of the state of California was justified in exempting the drugless practitioner by prayer from the operation of the law because a diagnosis in treatment by prayer is not necessary, for the same reasons the drugless practitioner who employs faith in almighty God, hope and mental suggestion, and mental adaptation in the treatment of disease, should likewise be exempt from the operation of the law.

We maintain that the legislature of the state of California did not have the power under the guise of a police regulation to distinguish between the different religious forms, rites and ceremonies employed by the different religious sects in the drugless treatment of disease.

The legislature of the state of California did not have the power under the guise of a police regulation to determine the particular religious form or ceremony which shall be employed in the drugless treatment of disease. To hold that the legislature had the power to limit the drugless treatment of disease to that class of practitioners who only employ prayer, would be to create a state system of drugless healing and forbidding the exercise of all other religious rites, forms or ceremonies, which would be as

foreign to our system of government as a state church for the cure of souls.

The Medical Law of the state of California admits the Christian Scientist to practice, to cure diseases without examination or certificate of registration because they employ prayer and mental suggestion in their practice. By what process of reasoning can the drugless practitioner who employs faith, hope and mental suggestion be excluded?

All systems of drugless healing are equal before the law. We have no orthodox system of drugless healing of disease by the employment of any particular religious rite or ceremony, and it is distinctively repugnant to the spirit of our Constitution and laws to attempt to establish such an orthodox system.

The only elements employed by the Master in the drugless treatment of disease while upon this earth were faith and mental suggestion when he healed the centurian servant, as reported in 8th chapter of Matthew, 10th and 13th verses, "When Jesus heard it he marveled and said to them that followed, 'Verily I say to you, I have not found so great faith, no, not in Israel,' and Jesus said unto the centurian, 'Go thy way, and as thou hast believed, so be it done unto thee,' and his servant was healed in the self-same hour." Again, when the Master healed the woman who had an issue of blood for twelve

years, as reported in the 9th chapter of Matthew, 22nd verse, "Jesus turned him about, and when he saw her he said, 'Daughter, be of good comfort, thy faith hath made thee whole,' and the woman was made whole from that hour." Again, when the Master restored the sight to the blind men, as reported in the 9th chapter of Matthew, 28th and 29th verses, "Jesus said unto them, 'Believe ye that I am able to do this?' They said unto him, 'Yea, Lord.' Then touched He their eyes, saying, 'According to your faith be it unto you.'" Again, when the Master healed the daughter of the woman of Canaan, as reported in the 15th chapter of Matthew, 28th verse, "Then Jesus answered and said unto her, 'Oh, woman, great is thy faith, be it unto thee, even as thou wilt,' and the daughter was made whole unto that very hour." Again, Christ taught his disciples that faith should be the one potent element employed in their drugless practice of healing disease, as reported in the 17th chapter of Matthew, 20th verse, "And Jesus said unto them, 'Verily, verily, I say unto you, if ye have faith as a grain of mustard seed, ye shall say unto this mountain, remove hence to yonder place and it shall move, and nothing shall be impossible unto you.'" Prayer was never employed by the Master in one single instance in the treatment of disease, and if an orthodox system for the drugless treatment of disease is

to be recognized and established by the state to the exclusion of all other systems employing religious rites or ceremonies the faith cure is entitled to that distinction.

The power to heal is of the spirit as explained in the 1st Cor., 12th chapter, 7-11 verses, "But the manifestation of the spirit is given to every man to profit will all. For to one is given by the spirit the word of wisdom; to another the word of knowledge by the same spirit; to another faith by the same spirit; to another the gift of healing; to another the working of miracles; to another prophecy; to another discernment of spirits; to another divers kinds of tongues; to another the interpretation of tongues. But all these things worketh that one and the self-same spirit dividing to every man severally as he will."

It is our contention that the legislature of the state of California did not have the power under the guise of a police regulation to regulate the practice of religious rites and ceremonies and mental therapeutics in the treatment of disease. These matters lie within the domain of the supernatural. Practical legislation has nothing to do with them. If they are a part of a man's faith the right to their employment cannot be abridged or taken away by legislation.

We maintain as a proposition absolutely sound and unassailable that the provisions of the act

applying to the class denominated drugless practitioners is special, highly discriminatory and void because the act in question expressly provides that the provisions of the act shall not be construed to regulate or to apply to any kind of treatment by prayer. Thus arbitrarily discriminating against every other religious rite and ceremony in the drugless treatment of disease, thereby creating a monopoly favored by law in the practice of drugless treatment of disease by prayer and arbitrarily excluding and prohibiting the exercise of every other religious rite, form or ceremony. That under the terms of the said act the complainant is denied the equal protection of the law in contravention of his rights under the Fourteenth Amendment to the Constitution of the United States, and it is, therefore, unconstitutional and void.

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